

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-2012

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN P. HAZEL,

Petitioner-Appellant,

-against-

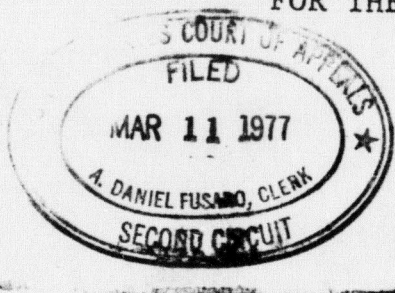
NORMAN CARLSON, Director,
U.S. Bureau of Prisons; and
GEORGE C. WILKINSON, Warden,
Federal Correctional Institution,
Danbury, Connecticut,

Respondents-Appellees.

Docket No. 77-2012

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.

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PLAINTIFFS

DEFENDANTS

HAZEL, JOHN P.

CARLSON, NORMAN, Director, Bureau of
Prisons;
WILKINSON, GEORGE C., Warden, FCI,
Danbury, Conn.

CAUSE

Petition for Writ of Habeas Corpus

lge

ATTORNEYS

John P. Hazel, pro se
Pembroke Station
Danbury, Connecticut 06810

Peter C. Dorsey
U. S. Attorney
Frank H. Santoro
Asst. U. S. Attorney
270 Orange St.
P.O. Box 1824
New Haven, Conn. 06508

77-2012

☒ CHECK
HERE
IF CASE WAS
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DATE

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C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED
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DATE 1976	NR.	PROCEEDINGS
9/20	1	ORDER TO FILE ANSWER, filed and entered. Ordered that respondents file answer on or before Oct. 4, 1976, as to why relief prayed for should not be granted; that service by U.S. Marshal of order, together with copy of verified petition, on U.S. Atty. for Dist. of Conn. on or before Sept. 22, 1976, be deemed sufficient service, and that documents may be filed without payment of fee. NEWMAN, J. M-9/20/76. Copy to Petitioner.
9/20	2	Petition For Writ of Habeas Corpus, filed together with Motion To Proceed In Forma Pauperis and Affidavit.
9/20		Attested copies of Order To File Answer, together with copies of Petition and Form 285(2), forwarded Marshal for service.
9/23	3	Marshal's return showing service, filed. - Order to File and Petition. (USAtty., 9/21/76; Warden, 9/21/76, Cert. Mail #187356)
9/30		Cert. Mail Retn. Rcpt. #187356, filed. - A. Gray.
10/4	4	ANSWER, filed by respondent.
10/18	5	Rebuttal to Government's Answer, filed by petitioner.
10/21	6	MEMORANDUM OF DECISION, filed and entered. Petitioner objects to transfer to Lewisburg under NARA but Judge Blumenfeld has held there is no impediment. Petition dismissed. NEWMAN, J. M-10/27/76. Copies to Petitioner, U.S. Atty., Warden, TEC, MJB, RCZ, JON, JEL, AHL, FOE, U. Conn. Law Rev.
10/27	7	Judgment, entered. Petition dismissed. MARKOWSKI, C. M-10/27/76. Copies to Petitioner, U.S. Atty., Warden.
11/3	8	Supplemental Answer, filed by respondent.
11/4	9	Petitioner's Notice of Appeal, Motion to Proceed on Appeal in Forma Pauperis, Appointment of Counsel and for Temporary Restraining Order, filed, with Notice of Appeal, endorsed: "11/4/76 Leave to Appeal in Forma Pauperis granted. Transfer is governed by Fed. R. App. P. 23." NEWMAN, J. M-11/5/76 Copies to petitioner, Warden and AUSA Santoro, also JON.
11/4		Petitioner's Affidavit in Support of Motion to Proceed in Forma Pauperis, filed. Copies to Warden and AUSA Santoro.
11/4		Petitioner's Motion of Indigent for the Appointment of Counsel, filed. Copies to Warden and AUSA Santoro.
11/5		Certified copies of Notice of Appeal and Docket Entries, along with copies of Affidavit and Motion for Appointment of Counsel and completed Forms C and D forwarded pro se Clerk, U. S. Court of Appeals
11/11		Acknowledgment of receipt of copies of Notice of Appeal, etc., received from Pro se Clerk, U. S. Court of Appeals.

FILED

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U. S. DISTRICT COURT
NEW HAVEN, CONN.

MICROFILM

OCT 22 1976

BRIDGEPORT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN P. HAZEL

V.

NORMAN CARLSON, DIRECTOR,
BUREAU OF PRISONS, ET AL

CIVIL NO. B-76-276

MEMORANDUM OF DECISION

Petitioner is incarcerated in the Federal Correctional Institution at Danbury, Connecticut. On July 1, 1972, he began serving a sentence not to exceed ten years under the Narcotic Addicts Rehabilitation Act. On April 11, 1975, he was paroled, but subsequently violated his parole and was returned to Danbury. On April 21, 1976, he was sentenced by the Superior Court of the District of Columbia on a grand larceny charge to a term of two to eight years to run consecutively to his N.A.R.A. sentence. Petitioner is appealing the consecutive sentence.

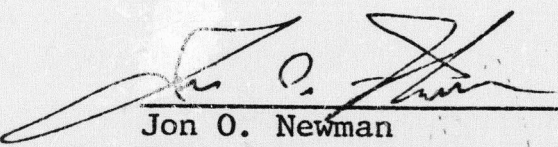
The Bureau of Prisons intends to transfer the petitioner from Danbury to the federal penitentiary at Lewisburg, Pennsylvania. The reason for the transfer is that it is Bureau policy generally to preserve Danbury's character as a correctional institution for adults serving sentences of five years or less and not regarded as security risks. Petitioner has approximately six years remaining on his N.A.R.A. sentence and up to eight years on his larceny sentence to run consecutively, for a possible total of fourteen years.

Petitioner claims that the purpose of N.A.R.A., to provide for treatment of drug abusers in appropriate facilities, 18 U.S.C.A. §§ 4251(c), 4253, precludes his transfer to a penitentiary.

The choice of the appropriate place of confinement for the petitioner rests with the Attorney General. 18 U.S.C.A. § 4082(b). Judicial review is appropriate only for abuse of discretion. There has been no such abuse here. The Government represents that the penitentiary at Lewisburg operates a drug abuse unit which would be available to petitioner upon transfer. There appears to be no reason not to consider this unit an appropriate place of confinement for a N.A.R.A. prisoner. On facts similar to these, King v. Norton, 336 F. Supp. 255 (D. Conn. 1972), Judge Blumenfeld held that there is no impediment to a transfer from Danbury to Lewisburg.

The petition is dismissed. The papers may be filed without fee.

Dated at New Haven, Connecticut, this 21 day of October, 1976.


Jon O. Newman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

SEP 20 9 36 AM '76

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

JOHN P. HAZEL,
Petitioner
-VS-
NORMAN CARLSON
Director-Bureau of Prisons
and
GEORGE C. WILKINSON,
Warden - F.C.I.
Danbury, Conn. 06810
Respondents

CIVIL NO. _____

B76 276

MOTION TO PROCEED IN FORMA PAUPERIS
AND AFFIDAVIT IN SUPPORT THEREOF

COMES NOW, JOHN P. HAZEL, PETITIONER PRO SE IN THE ABOVE ENTITLED ACTION, AND HEREBY REQUESTS PERMISSION TO PROCEED IN FORMA PAUPERIS WITHOUT BEING REQUIRED TO PAY THESE FEES, COSTS, OR TO GIVE SECURITY THEREOF. PETITIONER STATES THAT BECAUSE OF HIS POVERTY HE IS UNABLE TO PAY THE COSTS OF THIS PROCEEDING OR TO GIVE SECURITY THEREOF, AND THAT HE BELIEVES THAT HE IS ENTITLED TO THE REDRESS HE IS SEEKING IN THIS CAUSE. THEREFORE, YOUR PETITIONER HEREBY REQUESTS PERMISSION THAT HE BE GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS.

RESPECTFULLY SUBMITTED,

John P. Hazel
JOHN P. HAZEL
PETITIONER PRO SE
BRIDGEPORT BRAILLON
DANBURY, CONN. 06810

AFFIDAVIT IN SUPPORT THEREOF

I, JOHN P. HAZEL, BEING FIRST DULY SWORN, DEPOSES AND SAYS THAT:

1. I WAS LAST EMPLOYED IN NOVEMBER OF 1975.
2. I HAVE NO PROPERTY OR OTHER ASSETS THAT COULD BE CONVERTED INTO CASH TO PAY THESE COSTS.
3. I HAVE NO STOCKS OR BONDS, SECURITIES, CHECKING OR SAVINGS ACCOUNT. THAT I HAVE APPROXIMATELY \$62.00 CREDITED TO MY PERSONAL ACCOUNT HERE AT THE F. C. I. IN DANBURY, CONNECTICUT.
4. I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY OF THE ABOVE REQUIREMENTS OF THIS AFFIDAVIT WILL SUBJECT ME TO THE PENALTIES FOR PERJURY.

WHEREFORE, YOUR ~~WIFE~~ ~~WIFE~~ PETITIONER HUMBLY PRAYS THAT THIS COURT WILL GRANT HIS APPLICATION TO PROCEED IN FORMA PAUPERIS

John P. Hazel
JOHN P. HAZEL

SWORN AND SUBSCRIBED BEFORE ME ON AUGUST 4th, 1976.

WITNESS E. A. Beasley

E. A. Beasley
Authorized by _____
to administer oaths
Danbury, Conn. 06810

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1

#2

#2

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

FILED

SEP 20 9 36 AM '76

JOHN P. HAZEL,
Petitioner
-VS-

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

NORMAN CARLSON,
Director, Bureau of Prisons
and
GEORGE C. WILKINSON,
Warden - F.C.I.
Danbury, Conn. 06810
Respondents

CIVIL NO. _____

B-76-276

MOTION FOR PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER PURSUANT
TO TITLE 28, U.S.C., RULE 65 OF THE
FEDERAL RULES OF CIVIL PROCEDURE.

COMES NOW, YOUR PETITIONER PRO SE, JOHN P. HAZEL, AND HEREBY REQUESTS THIS HONORABLE COURT TO ISSUE A TEMPORARY RESTRAINING ORDER THAT WOULD PREVENT THE RESPONDENTS FROM TRANSFERRING PETITIONER TO ANY FEDERAL PRISON FOR THE REASONS MORE FULLY SET-FOORTH BELOW:

JURISDICTION

JURISDICTION OF THIS HONORABLE COURT IS INVOKED UNDER TITLE 28, U.S.C. RULE 65, FEDERAL RULES OF CIVIL PROCEDURE, SECTIONS 1351, and 2241. VENUE IS BASED UPON SECTIONS 1391(e) and 1361.

STATEMENT OF FACTS

1. PETITIONER IS PRESENTLY CONFINED IN THE FEDERAL CORRECTIONAL INSTITUTION IN DANBURY, CONNECTICUT, WHERE HE IS PRESENTLY SERVING A MARIJUANA SENTENCE NOT TO EXCEED 10 YEARS THAT BEGAN ON JULY 1st, 1972.
2. PETITIONER WAS PAROLED ON APRIL 11th, 1975 and was subsequently violated AND TAKEN INTO CUSTODY ON DECEMBER 4th, 1975, AND RETURNED TO THE F.C.I. HERE AT DANBURY, CONNECTICUT TO MEET WITH THE FEDERAL PAROLE BOARD FOR A REVOCATION HEARING. THIS HEARING WAS HELD IN MARCH OF 1976 AND AT THAT TIME PETITIONER RECEIVED A 13 MONTH SET-OFF. PETITIONER IS SCHEDULED FOR AN INSTITUTIONAL REVIEW HEARING WITH THE FEDERAL PAROLE BOARD ON OR BEFORE AUGUST, 1977. (see attached)
3. PETITIONER WAS RETURNED TO THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA ON APRIL 20th, AND ON APRIL 21st, 1976, WAS SENTENCED ON A FINDING GRAND LARCENY CHARGE TO A TERM OF TWO TO EIGHT (2 to 8) YEARS TO RUN CONSECUTIVE WITH HIS MARIJUANA SENTENCE OF WHICH PETITIONER OWES APPROXIMATELY 6 YEARS. IT IS SIGNIFICANT TO NOTE THAT THE SENTENCING JUDGE RECOMMENDED THAT PETITIONER TO SERVE SAID SENTENCE AT DANBURY, CONNECTICUT AND ISSUED A COURT ORDER IN REGARDS TO THAT RECOMMENDATION. (see attached) PETITIONER FURTHER STATES THAT HIS CONSECUTIVE SENTENCE IS CURRENTLY UNDER APPEAL.
4. PETITIONER IS CURRENTLY WORKING IN THE FEDERAL PRISON INDUSTRIES IN THE GLOVE FACTORY WHERE HIS COMPENSATION IS FINANCIAL PLUS FIVE (5) DAYS PER MONTH KNOWN AS INDUSTRIAL GOOD TIME WHICH WILL DECREASE HIS PRESENT MANDATORY RELEASE DATE.

STATEMENT OF CASE

ON JULY 28th, 1976, PETITIONER WAS INFORMED BY HIS UNIT MANAGER AND HIS CASE MANAGER THAT HE WAS BEING RECOMMENDED FOR TRANSFER TO THE FEDERAL PENITENTIARY IN PENNSYLVANIA, PENNSYLVANIA. THE ONE AND ONLY REASON GIVEN PETITIONER WAS THE POLICY STATE AT THE P.C.I. OF NOT KEEPING PRISONERS WITH ADULT SENTENCES OF OVER FIVE (5) YEARS AND PRISONERS WITH STAYING OUT OVER TEN (10) YEARS. THEY FURTHER STATED THAT PETITIONER HAD TOO MUCH TIME FOR THIS TYPE OF INSTITUTION. PETITIONER DID NOT REQUEST SUCH A TRANSFER AND REQUESTED CONSIDERATION TO BE ALIGNED TO REMAIN HERE AT THE P.C.I. IN DANBURY, CONNECTICUT TO SERVE SAID SENTENCES.

PETITIONER STATES THAT THE 99a OF CHRSO, 1st SECTION, AMENDED THE ORIGINAL NARCOTIC ADDICT REHABILITATION ACT OF 1966 TO READ AS FOLLOWS: "TO PROVIDE FOR THE DEVELOPMENT AND OPERATION OF TREATMENT PROGRAMS FOR CERTAIN DRUG ABUSERS WHO ARE CONFINED TO OR RELEASED FROM CORRECTIONAL INSTITUTIONS AND FACILITIES" NOWHERE DOES IT STATE THAT FEDERAL REHABILITATION CAMPS CAN BE OR COULD BE USED AS HELD AND FACILITIES FOR PERSONS CRIMINAL UNDER TITLE 18, U.S.C. SECTION 4253, BETTER KNOWN AND REFERRED TO AS TITLE II OF THE NARCOTIC ADDICT REHABILITATION ACT OF 1966.

PETITIONER STATES THAT HE IS ENTITLED TO TREATMENT BY LAW IN A TREATMENT FACILITY THAT PROVIDES FOR BUT IS NOT LIMITED TO, MEDICAL, EDUCATIONAL, SOCIAL, PSYCHOLOGICAL, AND VOCATIONAL SERVICES, CORRECTIVE AND PREVENTIVE GUIDANCE AND TRAINING, AND OTHER REHABILITATIVE SERVICES, AND SUPERVISED AFTERCARE IN THE COMMUNITY THAT IS FEDERALLY FUNDED.

PETITIONER STATES THAT IF HE WERE TO BE TRANSFERRED TO A FEDERAL PENITENTIARY AND DENIED THE ABOVE MENTIONED TREATMENT AVAILABLE ONLY IN APPROVED CORRECTIONAL FACILITIES, HE WOULD BE DENIED DUE PROCESS OF LAW, EQUAL PROTECTION, AND SUFFER CRUEL AND UNUSUAL PUNISHMENT THAT IS PROHIBITED BY THE 4th, 8th, & 14th AMENDMENTS OF THE U. S. CONSTITUTION.

PETITIONER FURTHER STATES THAT IF HE WERE TO BE TRANSFERRED TO A FEDERAL PENITENTIARY, AND THEN AT A LATER DATE WAS SUCCESSFUL IN HIS APPEAL REGARDING HIS CONSECUTIVE SENTENCE, HE WOULD BE IN A TOTAL RUMAL AND OBTUSE SERVING A CONFINEMENT TO "TREATMENT" WHICH WOULD BE MEANINGLESS AND IN DIRECT CONFLICT WITH THE INTENT OF CONGRESS IN PASSING THE N.A.R.A. CONGRESS DID NOT DELEGATE THEM A PROMPT OR POWER FOR PRISON OFFICIALS TO CHANGE THE WARE OVER THE DOOR TO FEDERAL REHABILITATION FROM CORRECTIONAL FACILITIES TO FEDERAL PENITENTIARY FACILITIES WHEN THEY LEACHED AND ABUSED THE N.A.R.A. OF 1966.

IN VIEW OF THE FOREGOING, YOUR PETITIONER HEREBY RESPECTFULLY REQUESTS THIS HONORABLE COURT TO ISSUE A TEMPORARY RESTRAINING ORDER AND A PERMANENT INJUNCTION PREVENTING THE RESPONDENTS FROM TRANSFERRING YOUR PETITIONER TO ANY OTHER FEDERAL PRISON LEADING FINAL DETERMINATION OF THE COURTS REGARDING HIS CONSECUTIVE SENTENCE AND HIS ALLEGATIONS REGARDING HIS PRESENT N.A.R.A. SENTENCE.

PETITIONER FURTHER REQUESTS THAT THIS HONORABLE COURT BE A FRIEND TO THE PETITIONER IN PROTECTING HIS RIGHTS AND CORRECT ANY AND ALL MISTAKES SO THAT THIS PETITION CAN PROPERLY BE ADJUDICATED IN THE INTEREST OF JUSTICE SINCE AS THE PETITIONER IS A LAYMAN WITH ONLY A LAYMAN'S KNOWLEDGE AND UNDERSTANDING OF THE LAW.

RESPECTFULLY SUBMITTED,

John P. Hazel
JOHN P. HAZEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE CAUSED COPIES OF THIS FOREGOING PETITION TO BE MAILED TO THE RESPONDENTS AND ONE COPY TO THE CLERK OF THE COURT IN NEW HAVEN, CONNECTICUT THIS 4th DAY OF AUGUST, 1976.

John P. Hazel
JOHN P. HAZEL

SWORN & SUBSCRIBED BEFORE ME
ON AUGUST 4th, 1976

WITNESS E. A. Bailey
E. A. Bailey
Authorized to administer oaths

For me, I, _____

Deputy Clerk



UNITED STATES DEPARTMENT OF JUSTICE

United States Board of Parole

Washington, D.C. 20537

Notice of Action

Name John P. Hazel

Register Number 25107-145 Institution Danbury

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

CONTINUE FOR INSTITUTIONAL REVIEW HEARING IN
AUG., 1977. REASONS: Your release at this time would
depreciate the seriousness of your parole violation and
promote disrespect of the paroling process. There does
not appear to be a reasonable probability that you would
Conditions or remarks: live and remain at liberty without violating
the law because you committed a new crime while on parole.

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

There does not appear to be a reasonable probability that you would conform to the conditions of parole due to the fact that you reverted to the use of dangerous drugs. You need additional institutional treatment, specifically drug counselling to enhance your capacity to lead a law abiding life.

Price
Sheep
Bur Rehab

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

March 3, 1976

(Date Notice sent)

Northeast
(Region - Specify)

gds

(Docket Clerk)

National Appellate Board

(Check)

INSTITUTION COPY

Superior Court of the District of Columbia

CRIMINAL DIVISION

SUBSTITUTE JUDGMENT AND COMMITMENT ORDER

United States of America

Case Number 74547-75B

vs

PDID Number 151-876

JOHN P. HAZEL

* * * * *

WHEREAS the above-named defendant having entered a plea of

☐ Not Guilty

☒ Guilty

to the charge(s) of GRAND LARCENY

and having been found guilty by

☐ Jury

☒ the Court

and a pre-sentence investigation and report having been

☒ prepared and considered

☐ not requested

IT IS HEREBY ADJUDGED that the defendant has been convicted of and is guilty of the offense(s) charged.

The defendant having been given an opportunity to make a statement in his own behalf, and the government having had the opportunity to reply thereto, it is hereby

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TWO (2) TO EIGHT (8) YEARS, SENTENCE TO RUN CONSECUTIVE TO ANY OTHER SENTENCE
PRESENTLY BEING SERVED. COURT RECOMMENDS THAT SENTENCE BE SERVED IN FEDERAL
INSTITUTION IN DANBURY, CONN.

IT IS FURTHER ORDERED that the Clerk or his Deputy deliver a true copy of this order to the United States Marshal and that the copy shall serve as the commitment of the defendant.

APRIL 22, 1976
(5-6-76 NUNC PRO TUNC) *Date*
Judge

A TRUE COPY OF THIS ORDER DELIVERED TO THE U.S. MARSHAL OR HIS DEPUTY:

Date *Deputy Clerk*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES :

v. :

74547-75

JOHN P. HAZEL :

O R D E R

Pursuant to D. C. Criminal Rule 36, this Court hereby corrects the record in this case to reflect that the Court recommends the defendant be committed to the Federal Penitentiary at Danbury to serve the sentence imposed by this Court in the above-captioned case.

A substitute Judgment and Commitment Order reflecting this change is attached to this Order.

SO ORDERED.

Tim Murphy

TIM MURPHY, JUDGE

May 11, 1976

cc: ✓ John Hazel, #108691

Edward Burns Esq.

U.S. Marshal Service

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

OCT 18 10 15 AM '76

JOHN P. HAZEL,
Petitioner :

-VS-

CIVIL NO. B-76-276

U. S. DISTRICT COURT
NEW HAVEN, CONN.

ROBERT CARLSON, DIRECTOR :
BUREAU OF PRISONS, ET AL,
Respondents :

REBUTTAL TO GOVERNMENT'S ANSWER

COMES NOW, John P. Hazel, petitioner pro-se, and being granted permission to proceed in the above entitled action without pre-payment of costs or filing fees pursuant to the provisions of Title 28, U. S. C., sec. 1915 (a), hereby offers the following in rebuttal to the government's answer:

1. HAS PETITIONER EXHAUSTED HIS ADMINISTRATIVE REMEDIES? Petitioner states that it would have been a fruitless effort for him to exhaust any administrative remedies. Once an inmate has been recommended or approved for transfer, his removal generally takes place within a two week period, and rarely ever exceeds a period of thirty (30) days before his transfer is effected and subsequently, removed from the jurisdictional court of confinement. To verify the above statement, petitioner refers to the front page of the respondent's answer under FACTS, and quotes therefrom: "The authorities at Danbury have manifested an intention to transfer the petitioner to the Penitentiary at Lewisburg, Pa., and would, indeed, do so but for the pendency of this litigation". By this statement of fact, it is clearly obvious that it would have been a meaningless and wasted effort for petitioner to even attempt to exhaust any administrative remedies. As for the B. O. P. policy statement 2001.6A (government's exhibit #1) referred to in the government's answer, petitioner states that even at this time, it is not to be found on the inmate bulletin board in his unit, nor in the inmate law library, or in a conspicuous place or area. Petitioner further states that certain B.O.P. policy statements are like Grand Jury minutes, you can get a copy only at trial time.

In view of the foregoing, it is readily understood why the government does not rest its case on this particular issue.

2. DOES RESPONDENT GENERALLY HAVE THE AUTHORITY TO SO ABUSE INMATES? Petitioner does not contest the respondents authority to transfer certain inmates in general, but does contest that authority in his particular case and circumstances. Petitioner states that he is no ordinary prisoner and that he is a Special Offender that was sentenced to "Commitment for Treatment" under Title 18 U.S.C. sec. 4251 thru 4256, which was later amended by the 92d Congress, 1st Session under H. R. 5612 that provided

for the development and operation of treatment facilities for certain drug abusers who are confined to or released from Correctional Institutions and Facilities. Congress was explicit in the language of this bill and their policy statement, and at no time did it make mention that Federal Penitentiaries could or should be used to carry out their wishes or intent.

It is significant to note that the government and the respondent's rely solely on petitioner's consecutive sentence in asking the court to deny his petition regarding his pre-posed transfer. Petitioner would like to point out that his consecutive sentence is for a violation of the D. C. Code, and was sentenced thereunder, and therefore, his consecutive sentence is not a Federal sentence. Petitioner states further that his consecutive sentence has not commenced nor is it in effect, and subsequently the Attorney General nor the Federal Bureau of Prisons have any power, authority, or jurisdiction regarding his consecutive sentence, nor would they have in the event his consecutive sentence should commence to be served. To clarify this situation, for all intents and purposes, the petitioner is currently serving a MARRA sentence of Commitment to Treatment with a detainer (wanted by the D. C. Department of Corrections stamped on his record) from the District of Columbia, Washington, D. C. Petitioner further states that if he were to be transferred merely because he has a detainer, then every inmate here at the F. C. I. in Danbury that has a detainer or wanted indication should be transferred, and not to do so would be a flagrant violation of petitioner's rights under the 14th Amendment of the U. S. Constitution which bars such discrimination.

Petitioner would like to bring to the court's attention that a federal law was enacted last year that prohibits aggregation of sentences regarding parole eligibility, and for computation of inmates earned good time allowances. This being the law, then surely the F.B. O. P. is without the power to aggregate petitioner's consecutive sentence which is not in effect, for the purpose of a transfer.

Furthermore, petitioner states that he has personal knowledge of at least two inmates who had and have similar circumstances as himself. The first being William Johnson, sentenced under Title 18, U.S.C., sec. 4253 in 1972, violated his parole and sentenced to a term of two (2) to seven (7) years in 1974, said sentence to run consecutive from his MARRA sentence of which he owed approximately eight (8) years, and if combined, had a total of approximately fourteen (14) years. He was allowed to remain here at the F.C.I. in Danbury, and was later paroled to his consecutive sentence in March of 1976. He was then transferred to the Minimum Security Facility in Allenwood, Pa. at his request. The second being Gordon Liddy who is currently here at the F.C.I. in Danbury serving a total sentence of twenty (20) years for his involvement in the Watergate Conspiracy. To deny the petitioner the same type of consideration shown to these two particular cases would be discrimination which is prohibited by the 14th Am-

ment of the U.S.C. In view of the foregoing, petitioner contends that the respondents do not have the authority to transfer him to a Federal Penitentiary.

3. IS SUCH A TRANSFER, OR A VISIT, VIOLATED BY THE RECOMMENDATION OF JUDGE MURPHY?

Petitioner states that such a transfer would clearly and obviously affect the recommendation of Judge Murphy. First of all, it is significant to note that the honorable Judge Murphy who sentenced the petitioner to his consecutive sentence, is the same judge who sentenced petitioner to a Commitment for Treatment under the provisions of HARA. In the instant case, Judge Murphy's wishes and intent for petitioner to serve both sentences at the P.C.I. in January are clearly reflected on petitioner's Judgment and Commitment Order and a further Court Order was issued in reference to that recommendation. Altho the petitioner would concede that the law is clear under Title 18 U.S.C., sec. 4032 (a) where a person convicted of a Federal offense shall be committed to the custody of the Attorney General who shall designate the place of confinement, petitioner would like to point out that he was not convicted of a federal offense, but of an offense against the D. C. Code, and any transfer contemplated, should be back to the place of original jurisdiction and confinement, which would be the D. C. Department of Corrections in Wash., D. C.

Petitioner states that altho Judge Murphy's recommendation does not prevent transfer, such a transfer would grossly affect his recommendation and the petitioner's exclusive right to treatment as provided by HARA.

4. DOES THE TRANSFER VIOLATE ANY VISIT RIGHTS UNDER HARA? Petitioner states that not only does he have an inherent right, but that he has an exclusive right by Congressional Law, to treatment as provided for under the provisions of HARA, Title 18 U.S.C., sec. 4251 (4) The term Treatment includes confinement and treatment in an institution and under supervised aftercare in the community and includes, but is not limited to, medical, educational, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the drug dependant person by correcting his anti-social tendencies and ending his dependence on narcotic drugs.

Here, the government makes reference to the aftercare provisions under HARA, but the petitioner would like to point out that we are not concerned with the aftercare provisions, but only the provisions of the petitioner's inherent and exclusive right to treatment while in custody. Petitioner further states that his vested rights to treatment under HARA are subject to modification only by the courts and further that the Attorney General nor the P. B. O. P. have any power, authority, or jurisdiction to modify his sentence that would affect his treatment and rehabilitation by virtue of a transfer to a U. S. Penitentiary.

The government's information is grossly misleading by stating that the petitioner has not availed himself of the drug treatment facilities in existence here at the F.C.I. in Danbury, and further states that the signed affidavit by James W. Schapp, Case Management Coordinator, is either intentionally or mistakenly misleading in regards to petitioner's participation in drug abuse programs that are operating within his unit. Petitioner states that he was returned to the F.C.I. here in Danbury as a parole violator on January 8, 1976 and was assigned to F Unit here in the institution, and assigned to a Static Drug Therapy Group under the direction of the MARA Unit secretary, Martha Wenzel, and the Unit Manager, Mr. Michael Pringle, who later assumed responsibility for this particular group when Ms. Wenzel was later promoted to Data Coordinator here within the institution. Petitioner states that he never missed a single group session from January thru April 20th, 1976, at which time he was returned to court and received his consecutive sentence.

Petitioner was then returned to the F.C.I. here at Danbury on July 16, 1976. Approximately one week thereafter, petitioner was assigned to E Unit and another Static Drug Therapy Group under the direction of his case manager, Keith Bagley, at which petitioner participated and never missed a group session up until September, 1976 when Keith Bagley resigned, thereby discontinuing the Static Group until such time as someone was appointed to re-activate this particular drug group.

The government and James W. Schapp, Case Management Coordinator, both make mention of the drug program available at Lewisburg Penitentiary. The petitioner would like to point out that they also have drug programs in the D. C. Department of Corrections, but the undeniable fact is that the petitioner was committed to treatment to the drug program under the MARA provisions available at the F.C.I. in Danbury, Ct., and not the drug program available in Lewisburg Penitentiary, or anywhere else.

If the Attorney General feels that petitioner cannot benefit from his MARA commitment for treatment, then the proper procedure or remedy would be for the Attorney General to notify the sentencing court that adequate facilities or programs for treatment should no longer be made available to the petitioner, and his reasons for such a recommendation would have to affirmatively appear in the record, as provided for under sec. 4253 of Title 18, U.S.C.

Petitioner states that the government wants to speculate that he would be or is a greater security risk by virtue of his consecutive sentence, and on the other hand, does not want the petitioner to be allowed to speculate favorable results regarding his pending appeal of the same consecutive sentence. Petitioner further states that if could be granted an appeal bond, and could post such bond, regarding his consecutive sentence, then his complaint would automatically be resolved as there would be no detainer or wanted indication on his institutional record, and therefore, no valid reason to transfer the petitioner. But due to the fact that the petitioner is a poor man, it is not likely that he will be granted an appeal

bond, and if so, more probable that he would be unable to post such bond.

SUBMISSION

AND IN SUBMISSION, petitioner states that he is not a disciplinary problem nor is he a security risk, as his institutional record will bare out. And in addition, petitioner states that there are only four (4) approved Treatment Facilities under the F.B.O.P. for MARRA commitments, which are; Lexington, Ky., Fort Worth, Texas, Milan, Michigan, and Danbury, Ct.,. To even suggest that Lewisburg Penitentiary is A Treatment Facility under the MARRA law and guidelines is absurd to say the least.

In view of the foregoing, petitioner respectfully requests this honorable court grant the following:

- (a) A hearing requiring his presence so that he may be more effective in prosecuting his petition.
- (b) An attorney to help aid the petitioner in the event the court should feel the need for such.
- (c) A subpoena for the following persons that are vital to petitioner's complaint:
 - James W. Schapp - Case Management Coordinator
F.C.I., Danbury, Ct.
 - Martina Menzel - Data Processing Coordinator
F.C.I., Danbury, Ct.
 - Michale Pringle - Unit Manager, F Unit
F.C.I., DANBURY, CT.
 - Keith Bagley - Ex-Case Manager of E Unit
Present address unknown
- (d) A further subpoena for the production of petitioner's institutional records, confidential file, all letters, papers, etc., for the court's use in determining the validity of petitioner's complaint.

WHEREFORE, your petitioner respectfully requests that this honorable court befriend him and grant him the relief that he seeks in the interest of justice and the American Concept of Fairplay.

Respectfully Submitted,

John P. Hazel
John P. Hazel - #25197
Petitioner Pro-Se
F.C.I., Danbury, Ct. 06310

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of this foregoing Rebuttal to be mailed to the Honorable Judge Jon O. Newman, the clerk of the court, and to the U. S. Attorney in New Haven, Ct. this 12th day of October, 1976.
Subscribed and sworn to before me this 12th day of October, 1976.

Paul D. Smith
NOTARY PUBLIC

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN P. HAZEL

:

V.

:

CIVIL NO. B-76-276 *MP*

NORMAN CARLSON, DIRECTOR
BUREAU OF PRISONS, ET AL

:

:

A N S W E R

The above captioned case presents questions as to the impending transfer of the Petitioner from the Federal Correctional Institution at Danbury, Connecticut to the Federal Penitentiary in Lewisburg, Pennsylvania. It is the position of the Respondent that the Petitioner may be duly transferred without any violation of his constitutional rights and that the Petition should accordingly be denied.

FACTS

Petitioner's underlying sentence is a ten year N.A.R.A. sentence. As Petitioner states in his motion, his parole was violated on this sentence and he was returned to Danbury with his next institutional review hearing scheduled for August, 1977. In April of 1976, the Petitioner was sentenced by Judge Murphy of the Superior Court of the District of Columbia to a term of two to eight years on a grand larceny charge to run consecutive with his N.A.R.A. sentence. Judge Murphy did recommend that this consecutive sentence be served at Danbury. The authorities at Danbury have manifested an intention to transfer the petitioner to the Penitentiary at Lewisburg, Pennsylvania and would, indeed, do so but for the pendency of this litigation. The above is the essential state of the case; further facts will be discussed in the course of Respondent's argument.

QUESTIONS PRESENTED

The essential question, of course, is the validity of the impending transfer. For the sake of analysis, this may be subdivided into four specific questions:

- 1.) Has Petitioner exhausted his administrative remedies?
- 2.) Does Respondent generally have the authority to so transfer inmates?
- 3.) Is such a transfer, otherwise valid, affected by the recommendation of Judge Murphy?
- 4.) Does the transfer disturb any vested rights under N.A.R.A.?

ARGUMENT

1.) It should be stated at the outset that it is apparent that petitioner has not exhausted any administrative remedies which he might have within the institution and the Bureau of Prisons generally regarding his complaint. Bureau of Prisons policy statement 2001.6A (Exhibit 1) prescribes an informal mechanism for the resolution of complaints such as this, specifically including complaints with respect to transfers. This procedure involves appeals all the way up to the Regional Director of the Bureau of Prisons. Written complaints under this mechanism are generally made on BP Form 9. The policy statement provides a time limit within which the Bureau must answer such complaints and goes on to state "if the time limit expires without a reply, it will be deemed to be a denial of the request. If dissatisfied with the response to his complaint and appeals, the offender is free to file suit in an appropriate court and attach documentary proof that he exhausted his administrative remedy". There being no proof that petitioner has so exhausted his administrative remedies, it is submitted that his petition might be denied on this ground. Respondent does not rest on this however, and will go on to discuss the substantive merits of the petitioner's claim.

3.) Pursuant to Bureau of Prisons Policy Standard 7300.13E, dated June 16, 1975 (the relevant portions of which are attached as Exhibit 2) dealing with delegation of transfer authority, the Bureau of Prisons has established guidelines dealing with the general transfer of inmates from one institution to another. Specifically, the guidelines for Danbury prescribe that prisoners, other than those serving a sentence of five years or less and not regarded as a security risk, may be transferred to another institution. The genesis of this guideline is within the discretion of the Director of Bureau of Prisons but presumably relates to the individual "personality" of the institution and its quality as one of not the highest security. This policy is entitled to a presumption of regularity and indeed is a formulation of the discretionary authority of the Attorney General with respect to the placement of inmates. See the cases of Montanye v. Haymes, 44 U.S.L.W. 5051(1976) and Meachum v. Fano, 44 U.S.L.W. 5053(1976) which generally sustain the discretionary prerogative of institutional officials concerning the transfer of inmates.

Petitioner's transfer clearly falls within the purview of this guideline. As a result of his consecutive sentence, he is clearly above the five year limit. The additional time, moreover, raises at least an inference that he now poses a greater security risk in that he has greater motivation to escape. He can clearly be transferred under this policy unless there is some specific constitutional bar. As the Affidavit constituting Exhibit 3 states, there will be compliance with paragraph 6(c) of the Policy Statement.

3.) Assuming that the transfer is otherwise valid, we proceed to the question of whether or not such a bar is afforded by the recommendation of Judge Murphy. The law is clear in this area that, under 18 U.S.C. §4082(a) a person convicted of a federal offense shall be committed "to the custody of the Attorney General

of the United States, who shall designate the place of confinement where the sentence shall be served". Although a sentencing Judge may make a recommendation, such recommendation is mere surplusage and has no binding authority as to designation of place of confinement. Hash v. Henderson, 385 F.2d 475 (C.A. Ark. 1967); U.S. v. McIntyre, 271 F.Supp. 991 (S.D.N.Y. 1967), affirmed 396 F.2d 859 (2nd Cir., 1968), cert. denied 393 U.S. 1054. Thogmartin v. Moseley, 313 F.Supp. 158 (D.C. Kan. 1970) affirmed 430 F.2d 1178, cert. denied 400 U.S. 910; U.S. v. Janiec, 505 F.2d 983 (C.A. N.J. 1974) cert. denied, 95 S.Ct. 1331. It is therefore clear that the recommendation of Judge Murphy does not provide a bar to the transfer.

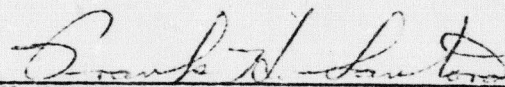
4.) The final point to be considered is whether a sentence under N.A.R.A. provides the requisite bar to the transfer. It is true that N.A.R.A. contemplates certain drug rehabilitation measures both in custody and on an "aftercare" basis. 18 U.S.C. §4251 et seq. There is no inherent right to such treatment, however, Marshall v. Parker, 470 F.2d 34 (C.A. Cal. 1972) affirmed 414 U.S. 417, and indeed, there may be some question as to petitioner's continued eligibility for any N.A.R.A. sentencing under 18 U.S.C. §4251(5)(3). At least insofar as the aftercare provisions are concerned, generally it is not normally contemplated that a N.A.R.A. sentence will be followed by a consecutive non-N.A.R.A. sentence. This, however, is a matter of sentencing discretion and it is inherently within the power of the sentencing Court to impose whatever consecutive sentence it wishes. There are no vested rights under N.A.R.A. which are not subject to modification by such subsequent sentence. Moreover, such aftercare provision of N.A.R.A. as provides for gradual reintegration into the community become less meaningful when petitioner's N.A.R.A. sentence is followed by a non-N.A.R.A. one.

Petitioner's case in this regard might command greater attention were there no drug treatment facilities whatsoever at the place of the intended transfer and if petitioner himself was taking full advantage of such treatment facilities which exist at Danbury. In both respects, the facts do not run in his favor. Lewisburg does, in fact, have drug treatment teams which provide rehabilitative support similar to those at Danbury if perhaps somewhat less comprehensive. See Exhibit 3. Moreover, it also appears as though petitioner has failed to avail himself of the drug treatment facilities presently in existence at Danbury (Exhibit 3) and, from an equitable point of view, can hardly be seen to complain of their impending denial. It is, therefore clear that the rehabilitative provision of N.A.R.A. do not provide a constitutional bar to the transfer. As a final matter it might be noted that petitioner's contention that a right not to be transferred is predicated on the possibility of success in the appeal of his consecutive sentence is purely speculative and as such, on its fact, would not entitle him to relief.

For the aforesaid reasons, it is therefore respectfully submitted that the petition be denied.

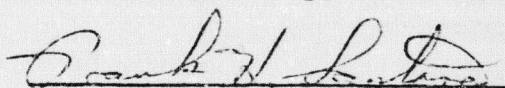
RESPECTFULLY SUBMITTED,

PETER C. DORSEY
UNITED STATES ATTORNEY


BY: FRANK H. SANTORO
ASSISTANT UNITED STATES ATTORNEY

C E R T I F I C A T I O N

This is to certify that a copy of the within and foregoing Answer was mailed this 4 day of October, 1976 to: John P. Hazel, Pro Se, c/o Federal Correctional Institution, Danbury, Connecticut.


FRANK H. SANTORO
ASSISTANT UNITED STATES ATTORNEY

BUREAU OF PRISONS

WASHINGTON, D. C. 20537

RECEIVED

JAN 10 1975

Policy Statement

SUBJECT: ADMINISTRATIVE REMEDY OF COMPLAINTS
INITIATED BY OFFENDERS IN BUREAU OF
PRISONS FACILITIES

2001.6A

10-18-74

1. PURPOSE. This Policy Statement authorizes procedures by which offenders may seek formal review of complaints which relate to their imprisonment if informal procedures have not resolved the matter. It establishes the Regional Office as the initial level of appeal from institution determinations.

2. DIRECTIVES AFFECTED. Policy Statement 2001.6 and Operations Memorandum 2001.11 on this subject are superseded.

3. DISCUSSION. Most complaints can be resolved quickly and efficiently through direct contact with staff who are responsible in the particular area of the problem. This is the preferred course of action. Staff awareness of the importance of prompt attention and reply to these routine requests will minimize the use of formal complaint procedures.

A viable complaint procedure will serve the offenders, the administration, and the courts. It will provide the offenders with a systematic procedure whereby issues raised relating to their confinement will receive attention and a written, signed response within a short period of time from the local administration, and from the Regional Office and the Central Office, if appealed.

Such a procedure assists the administration by providing an additional vehicle for internal solution of problems at the level having most direct contact with the offender. It also provides a means for continuous review of administrative decisions and policies. Further, it provides a written record in the event of subsequent judicial or administrative review. A viable Administrative Remedy Procedure should reduce the volume of suits filed in court and will develop an undisputed record of facts which will enable the courts to make more speedy dispositions.

Use of the Administrative Remedy Procedure is the proper avenue of appeal from dispositions of the Institution Discipline Committee or from minor disciplinary actions (Policy Statement 7400.5C).

If the offender cannot resolve his complaint informally, and wishes to utilize this Administrative Remedy Procedure, he shall file his complaint with the Warden or his designee. If not satisfied with the institution's reply, he may appeal to the Regional Director. If he is not satisfied with the Regional Director's response, he may appeal to the Assistant Director, General Counsel and Review.

EXHIBIT 2

An offender may, if he chooses, forward his complaint through the Prisoners' Mail Box or he may file his law suit directly with the appropriate court. However, courts frequently require evidence that administrative remedies have been exhausted before ruling on a complaint, and offenders should be so advised.

4. ACTION: The Chief Executive Officer of each Bureau of Prisons facility is responsible for the establishment and monitoring of an Administrative Remedy Procedure which is compatible with the provisions of this Policy Statement. The operation of the program will be the responsibility of the Warden or the Associate Warden. The investigation of complaints and the drafting of the reply should ordinarily be done by department heads or their representatives, subject to review of the Warden or Associate Warden. The final response shall be signed by both the department head or his representative, and the reviewer. Responses to complaints regarding dispositions of the Institution Disciplinary Committee must be signed by the Chief Executive Officer of the institution.

Each Regional Director is responsible for establishing in the Regional Office a procedure for review and response to appeals submitted under this procedure. While the investigation of the complaint may be conducted by the appropriate Regional Office staff member designated by the Regional Director, the typed response (Part B) of form BP-DIR-10 must be signed by the Regional Director.

5. PROCEDURES. All offenders should be advised of this Administrative Remedy Procedure. This can be accomplished, among other means, by posting the local Policy Statement on inmate bulletin boards, through inmate publications and by including it in the admission-orientation program. Where appropriate, the local Policy Statement should be translated into Spanish.

It is suggested that the forms be maintained by the Correctional Counselors wherever practicable. Experience has demonstrated that complaints can frequently be resolved by the counselor.

Institutions shall maintain a monthly log of complaints filed under this procedure. The attached institution log sheet should be locally reproduced and used for this purpose. At the beginning of each month, a copy of the completed log for the two previous months should be sent to the Regional Director and to the Central Office, Office of General Counsel and Review.

Regional Offices shall maintain a monthly log of appeals filed under this procedure. The attached regional log should be reproduced locally and used for this purpose. At the beginning of each month, a copy of the Regional Office log for the previous two months should be forwarded to the Central Office, Office of General Counsel and Review.

The following Subject Codes will be used in the logs to describe the subject of the complaint. If more than one subject is raised, use the single code which best describes the principal complaint.

SUBJECT CODES

1. Transfer - excluding CTCs
2. Institutional Program Assignment - generally, including custody, MSA
3. Community Communications - including mail, visits, phone
4. Community Programs - including CTCs, furloughs
5. Disciplinary Matters - generally, including segregation, loss of good time
6. Institution Operations - generally, including food, clothing, sanitation, personal property. Does not include subjects described better in categories 2, 3, or 5.
7. Medical
8. Legal - generally, including jail time, detainers, sentence computation
9. Parole - generally, including parole reports, release plans
10. Complaints Against Staff
11. Other - specify

6. USE OF THE COMPLAINT FORM. If an offender cannot resolve his complaint through informal contact with staff, and wishes to file a formal complaint for administrative remedy, he should secure a copy of form BP-DIR-9 and write his complaint in the space provided. He may obtain assistance from other offenders or from staff to help him complete the form. The offender should then give the completed form to the designated staff member who in turn will provide a signed receipt for him. Distribution of the copies of each form is noted on each page.

The complaint ordinarily must be filed within 30 days from the date on which the basis of the complaint occurred unless it was not feasible to file within such period. Institution staff have up to 15 days from receipt of the complaint, excluding week-ends and holidays, to act upon the matter and provide a written response to the offender. When the complaint is of an emergency nature and threatens the offender's immediate health or welfare, reply must be made as soon as possible, and within 48 hours from receipt of the complaint. The institution duty officer may be utilized in such instances.

When the proper course of action is determined, the "Response" (Part B) should be completed and signed. One copy should go to his central file, and original and other two copies given to the offender. Responses should be made as quickly as possible, should be based upon facts which pertain specifically to the issue, and should deal only with the issue raised, and not include extraneous material.

If an offender is not satisfied with the institution's response, he may file an appeal to the Regional Director, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Warden's response. This should be done on form BP-DIR-10 and must include a completed copy of BP-DIR-9 (the initial complaint) with the institution's response. A receipt for his appeal will be sent to the offender by the Regional Director, who will then reply within 20 days from receipt of the appeal, excluding week-ends and holidays.

If the offender is not satisfied with the reply from the Regional Director, he may file a further appeal to the Assistant Director, Office of General Counsel and Review, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Regional Director's response. This should be done on form BP-DIR-11, and must include a completed copy of both the form BP-DIR-9 (the original complaint) and the form BP-DIR-10 (appeal to the Regional Director). A receipt for this appeal will be sent to the offender and within 20 days from that date, excluding week-ends and holidays, a reply will be made.

If an offenders' complaint is of a sensitive nature, and he reasonably believes he would be adversely affected if it is known at the institution that he is making the complaint, he may file it directly with the Regional Director, Bureau of Prisons through the Prisoners' Mail Box. In such cases, he must clearly explain the reason for not filing in the institution. The Regional Office will send the offender a receipt, and reply in 20 days, excluding week-ends and holidays.

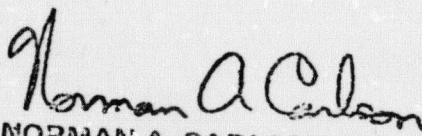
If the time limit expires without a reply, it will be deemed to be a denial of the request. If dissatisfied with the response to his complaint and appeals, the offender is free to file suit in an appropriate court and attach documentary proof that he exhausted his administrative remedy.

7. EXCEPTIONS. Nothing in this Policy Statement should be construed to affect in any way, the separate procedure established pursuant to the Federal Tort Claims Act, or the Claims for Inmate Injury Compensation under 18, USC, 4126.

The period of time referred to for action by the reviewing officials may be extended for a like period upon a finding that the circumstances are such that the initial period is insufficient to make an appropriate decision. This must be communicated in writing to the offender.

8. LOCAL ISSUANCE. The head of each Bureau of Prisons facility will revise his local Policy Statement on this subject to incorporate these changes, and forward a completed copy to his respective Regional Office and to the Office of General Counsel and Review.

9. THIS POLICY IS EFFECTIVE NOVEMBER 1, 1974.


NORMAN A. CARLSON
Director, Bureau of Prisons



Policy Statement

SUBJECT: DELEGATION OF TRANSFER AUTHORITY

NUMBER
7300.13D

DATE
6-16-75

1. POLICY. The Bureau of Prisons attempts to place all committed offenders in the correctional facility for which they are most appropriately classified in terms of age, place of residence, offense, sentence, and prior record.

2. PURPOSE. In order to implement this policy, the Director has delegated the authority to the Chief Executive Officer of each federal facility to transfer offenders from one institution to another, or to an approved non-federal facility. This delegation will assure expeditious movement of an offender to an institution for which he more properly classifies.

3. DELEGATION OF AUTHORITY.

- a. Pursuant to the provisions of Title 18, USC, Section 4082, 28 CFR 0.96(c), and 0.97, and the following guidelines and regulations, the Regional Director and the Chief Executive Officer are authorized to issue transfer orders. This authority may not be redelegated except to a person designated as Acting Chief Executive Officer or Acting Regional Director. *
- b. Authority delegated to the Deputy Assistant Director, Division of Institutional Services, in Delegation of Authority, 1105.22, paragraph 4d, dated August 4, 1966, has been redelegated to the Chief Executive Officer of each federal institution.
- c. Upon completion of the report of the Board of Examiners (as required by 18, USC, Section 4241) the Warden, Director, or Superintendent shall complete the transfer authorization by signing the required number of copies of Admin. Form 5, or Admin. Form 9, as is appropriate.

4. DIRECTIVES AFFECTED. Policy Statement 7300.13D, dated June 19, 1974 is hereby rescinded.

SUPT'S OFFICE
FEDERAL PRISON CAMP

JUN 12 1974

FLA 11 A.F.B. FLORIDA

Policy Statement 7400.5 dated 10-4-74 (Inmate Discipline) Referenced

Policy Statement 7900.47 dated 4-30-74 (Special Offenders) Referenced

Policy Statement 7550.21A (Community Programs Manual) dated 10-15-74 Referenced

EXHIBIT 2

Policy Statement 7900.51 (Close Supervision Cases) dated 4-15-75 Referenced.

5. GENERAL GUIDELINES

- a. A significant number of transfers will be for the purpose of placing newly committed offenders in institutions for which they more properly classify. To provide classification committees and teams with current information as to the mission of each federal institution, there is attached to this delegation Appendix A, which describes the population, characteristics, commitment areas, security limitations, and significant program resources of each institution. The overall integrity of this classification system must be preserved.
- b. Generally, transfer consideration is most appropriately given at the time of intake screening, initial classification, or at regularly scheduled reviews.
- c. At an inmate's initial classification, the staff should attempt to plan a complete program for the entire period of confinement, including both institutional and post-release phases. In making this plan, all the resources of the Federal Prison System should be considered.
- d. Transfer should be considered when it becomes apparent that the offender's:
 - (1) program or other needs will be best served by the programs at another facility
 - (2) when the continuity of his training and/or treatment program requires it
 - (3) because the resources of the institution are not adequate to meet the inmate's problems

Then the Chief Executive Officer may issue an order directing the transfer of the offender to a more appropriate facility following the guidelines in Appendix A, and subject to the limitations and procedures outlined in this policy statement. *

- e. In the exercise of this transfer authority, the Chief Executive Officer must be particularly alert to the limitations (section 6) regarding the place of confinement for misdemeanants, juveniles, youths, addicts, and mentally-ill offenders.

6. LIMITATIONS AND REGULATIONS

- * a. Federal Juvenile Delinquency Act cases may be transferred under this delegation of authority to another juvenile or youth institution (namely

Pleasanton, Englewood, Ashland, and Morgantown) according to the procedures established in this policy statement. Transfers of FJDA commitments to an institution other than the four named above must be referred to the Regional Administrator, Case Management Branch, for approval.

- * Transfers of FJDA commitments from Youth Centers to other federal institutions will be approved when it is demonstrated that those programs are clearly warranted; e.g., when the inmate is assaultive and staff and/or inmates are in jeopardy, or when an inmate is a serious escape risk. Under no circumstances will FJDA cases be placed in a penitentiary; placement in FCI's will be limited to those which have large numbers of youthful offenders, e.g., Milan, Tallahassee. *
- b. Youth Corrections Act commitments shall be classified at the receiving institution, where the initial parole hearing will also be given. Following this hearing, or any appropriate time thereafter, the youth offender may be transferred by delegated authority to another more appropriate youth institution without referral to the Regional Case Management Branch. Youth offenders recommended for an adult correctional facility at the time of initial classification or at any later date, shall be referred to the Regional Administrator, Case Management Branch for approval. (See paragraph 7 b. for exceptions).

Any youth offender, having once been authorized for transfer to an adult Federal Correctional Institution, may be transferred under delegated authority to some other, more appropriate, adult FCI. However, any youth offender authorized for transfer to a penitentiary by the Regional Office may not be transferred to another penitentiary under delegated authority; each transfer of this nature must be approved by the Regional Case Management Branch.

- c. NARA, Title II cases remain at the institution where they are committed unless specific Regional Office authorization is granted. Recommendations require a full progress report and should be forwarded to the *
- * Regional Case Management Administrator who will confer with the Regional Mental Health Administrator. *
- d. Misdemeanants, i.e., those offenders who have been convicted of offenses for which the maximum penalty is one year or less, may not be transferred to penitentiary-type institutions without first obtaining a waiver-Record Form No. 37. Having obtained a waiver, the general delegation of authority may be used as appropriate.

DANBURY

Federal Correctional Institution, Danbury, Connecticut (Code 145)

Danbury is a correctional institution for adults who are not regarded as extremely assaultive offenders, who do not have serious prior records; serving sentences of five years and less and not regarded as security risks. Those suitable by reason of having adjusted well while serving the major portion of longer sentences at penitentiaries may also be considered. Approximately 200 inmates are sentenced for treatment or study under the Narcotic Addict Rehabilitation Act.

Age Range: Adult, 24 and older.

Service Area: New York, New Jersey, Pennsylvania, Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont, Maine, Delaware, and Maryland.

Planned Capacity: 600

Parole Hearings: Conducted by the Adult Division of the U. S. Board of Parole in February, April, June, August, October, and December.

Clinical Services: Forensic Unit; two full-time Psychiatrist; two full-time clinical psychologists assigned to NARA Unit. Standard range of medical services.

Custody and Housing: Housing mostly in open dormitories, but 84 cells are available for special purposes. Maximum security facilities are quite limited. Functional Unit System includes DAP and Alcoholic specialization, and a Regional Mental Health Unit.

Close - Restricted to inner compound, but may be employed in industries

Medium - No restrictions while under constant supervision.

Minimum - No restrictions with periodic checks. Approximately one-third of the population is classified as minimum custody.

Industries: Glove factory employs 85 men, provides experience in sewing machine operation. Cable molding factory industries employs 145 men, provides specialized experience in soldering and electronic hand tools. Additional 30 inmates work in the business office, quality control department and the warehouse.

Special Training Opportunities: Vocational training is offered in the areas of welding (vertical, arc, and overhead), radio and television repair (primarily color), a small engine repair, offset printing, typing and business machines, and interstate trucking. In addition to vocational training, a college program is conducted within the institution by local colleges for credit.

I, JAMES W. SCHAPP, CASE MANAGEMENT COORDINATOR,
BEING DULY SWORN, DO HEREBY STATE THAT I HAVE
REVIEWED THE RESPONSE TO PLAINTIFF'S PETITION AS
IT RELATES TO THE FEDERAL CORRECTIONAL INSTITUTION,
DANBURY, CONNECTICUT AND BASED ON RECORDS
MAINTAINED BY THIS INSTITUTION AND UPON PERSONAL
KNOWLEDGE, AND THAT THE INFORMATION CONTAINED IN
THE RESPONSE TO PLAINTIFF'S PETITION IS TRUE AND
ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

James W. Schapp
JAMES W. SCHAPP
CASE MANAGEMENT COORDINATOR

SWORN TO AND SUBSCRIBED BEFORE ME THIS 1st DAY OF
OCTOBER 1976.

Neil C. Avelle
NOTARY PUBLIC

NOTARY PUBLIC

My Commission expires March 31, 1977

Danfield County, Conn.

AFFIDAVIT

STATE OF CONNECTICUT
FAIRFIELD COUNTY

FEDERAL BUREAU OF PRISONS POLICY STATEMENT ENTITLED, DELEGATION OF TRANSFER AUTHORITY, 7300.13E, DATED JUNE 16, 1975 DELEGATES AUTHORITY TO THE CHIEF EXECUTIVE OFFICER OF EACH FEDERAL FACILITY TO TRANSFER OFFENDERS FROM ONE INSTITUTION TO ANOTHER. ATTACHMENT E OF THIS POLICY STATEMENT ADDRESSES ITSELF TO FEDERAL CORRECTIONAL INSTITUTION, DANBURY, CONNECTICUT. DANBURY IS AN ADULT INSTITUTION FOR OFFENDERS NOT REGARDED AS ASSAULTIVE, AND WHO DO NOT HAVE SERIOUS PRIOR RECORDS; SERVING SENTENCES OF FIVE YEARS AND LESS AND NOT REGARDED AS SECURITY RISKS. DANBURY DOES ACCEPT INMATES SENTENCED UNDER NARA STATUTE UP TO TEN YEARS.

JOHN P. HAZEL IS CURRENTLY SERVING A NARA PAROLE VIOLATOR TERM OF SIX YEARS, SIX MONTHS AND TWENTY-SEVEN DAYS. ONE APRIL 22, 1976, HE RECEIVED A NEW SENTENCE OF TWO TO EIGHT YEARS TO RUN CONSECUTIVE TO THE VIOLATOR TERM. THESE TWO SENTENCES, WHEN COMBINED, MAKE FOR A TOTAL SENTENCE GREATER THAN FOURTEEN YEARS. IN VIEW OF THIS COMBINED SENTENCE, MR. HAZEL APPROPRIATELY CLASSIFYS FOR U. S. PENITENTIARY, LEWISBURG, PENNSYLVANIA.

MR. HAZEL WAS RETURNED TO DANBURY ON JULY 14, 1976. SINCE HIS RETURN HE HAS NOT PARTICIPATED IN DRUG ABUSE PROGRAMS THAT ARE OPERATING WITHIN HIS UNIT.

U. S. PENITENTIARY, LEWISBURG OPERATES A DRUG ABUSE UNIT, AND IF TRANSFERRED, MR. HAZEL WOULD HAVE THE

OPPORTUNITY, AT SOME TIME DURING HIS SENTENCE, TO
PARTICIPATE IN THIS PROGRAM. PRIOR TO TRANSFER OF
NARA CASES, CLEARANCE MUST BE OBTAINED FROM REGIONAL
OFFICE.

IN VIEW OF POLICY STATEMENT 7300.13E AND THE
COMBINED SENTENCE MR. HAZEL IS SERVING, IT REMAINS
OUR INTENTION TO TRANSFER MR. HAZEL TO LEWISBURG.

INSTITUTIONAL DRUG PROGRAM DESCRIPTIONS



MAY 1976

Pamphlet FPS
NARA & DAP-1

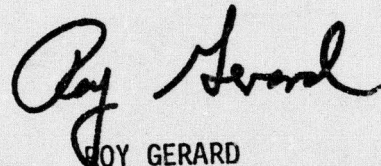
INTRODUCTION

In November 1966, the Narcotic Addict Rehabilitation Act (NARA) was passed. Title II authorized the Bureau of Prisons to provide specialized programs and community services for eligible narcotic addicts. In March 1968, the first institutional drug abuse unit became operational. As of July 1971, five NARA units had been established.

The restrictions of the NARA Act, however, made it impossible to reach many offenders. In July 1971, the Bureau began establishing "non-NARA" programs for drug-dependent offenders. Today there are 23 units for drug addicted or drug dependent persons, with a capacity of approximately 2100.

The map which follows, locates Drug Abuse Program facilities as of May 1976. These specialized programs vary widely in the techniques applied to reduce drug addiction and dependency. Generally, some form of "therapeutic community" approach, together with a variety of techniques, such as Reality Therapy, Synanon Games, Transactional Analysis, and Gestalt Therapy, are available. Educational, vocational, recreational, and religious programming are also available. Each unit manager is responsible for developing his drug program. Emphasis is on helping residents learn to behave responsibly and to improve their relationships with others and with the larger social system. They often live together in one unit but otherwise are not isolated from the rest of the institution's offender population.

Following release from institutional programs, special supervision by a United States Probation Officer and special services are provided. To carry out these community services, the Bureau of Prisons has arranged contractual services with 220 state, local, and private agencies. Policy and procedures are coordinated with the United States Probation Office and the United States Board of Parole.



ROY GERARD
Assistant Director
Correctional Programs Division

BUREAU OF PRISONS DRUG ABUSE FACILITIES



FP-101-4-676-20-5343

1976

Institutional Drug Program Descriptions

There follows descriptions of all NARA* and DAP** Units in federal institutions.

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Code: *NARA = Narcotic Addict Rehabilitation Act

**DAP = Drug Abuse Program

NARA UNIT (E)
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT

- I. AGE RANGE: 24 years of age and older.
- II. STAFFING: Unit Manager, services of 1/2 time psychologist, one casemanager, two correctional counselors, and one secretary.
- III. CAPACITY: 68
- IV. STYLE & CONCEPT OF HOUSING: The new program, the TARET Community, is a system based on a humanistic philosophy, theoretical concepts of Transactional Analysis and Rational Emotive Therapy, employing Cognitive Behavioral Procedures based on learning theory, and clinical procedures which are directed toward helping persons change their attitudes, feelings and behaviors in ways which are consistent with self elected values and goals. The TARET Program functions as a therapeutic community, utilizing a variety of ongoing, time limited, and problem focused groups. It is an action-oriented, total system concept structured around a variety of sequential cluster activities.
- V. TREATMENT PROCESS:
 - A. Orientation Period
 1. Criteria for Admission
 - a. Provisions of Title 18 USC, Section 4252 of the Narcotic Addict Rehabilitation Act of 1966. Under this Section two main questions are asked: (1) Is the offender a narcotic addict as defined by the Narcotic Addict Rehabilitation Act, and (2) Is he likely to be rehabilitated through treatment. Upon completion of this study, a final sentence determination is made by the committing court.

- b. Based on the individual needs and motivation of those we have who have drug related problems.

2. Method of Selection

- a. The U. S. District Court sentences individuals under Title 18 USC, Section 4253 of the Narcotic Addict Rehabilitation Act of 1966. Although the Court has sole sentencing jurisdiction, the Court is helped in the decision by the study prepared in the NARA Unit by the NARA Staff. Information from the study is obtained from the Presentence Investigation, interviews, medical examinations, psychiatric evaluations, psychological and educational tests, and feedback from members of the institutional staff.
- b. New commitments are screened by the operational lieutenant for history of drug abuse and assigned to an appropriate unit. Designated court commitments, inmate requests and transfers from other institutions or by direct referral from other unit teams.

B. Classification/Reclassification Process

- 1. Method of Differential Goal Formulation - Inmates themselves are critical factors in determining their anticipated level of functioning. With the unit team, the inmate develops an individualized program plan utilizing those resources present within the unit and the institution which best serves his needs. Basic to this idea of voluntary participation is the well founded preposition that an individual must, of his own volition, be motivated to participate in a program activity if he is to gain any lasting benefit from it. Each inmate is evaluated every 90 days and reformulation of goals is made when indicated.

C. Treatment Program

1. Techniques and Procedures - Therapeutic groups run by psychologist and staff members utilizing a variety of ongoing, time limited, and problem focused groups.

a. Ongoing Groups

- (1) Transactional Analysis and Rational Emotive Therapy
- (2) Static
- (3) Seminars
- (4) Crisis - All Purpose

b. Time Limited Groups

- (1) Relaxation Therapy
- (2) Transactional Analysis
- (3) Rational Emotive Therapy
- (4) Sensitivity - Gestalt
- (5) Personal Growth
- (6) Release - Feedback Preparation
- (7) Positive Mental Attitude
- (8) Cognitive Behavior Therapy
- (9) 4252 Study Groups

c. Problem Focused Groups

- (1) Assertive Training
- (2) Overcoming Fears
- (3) Marriage and Sexuality
- (4) Self Control Procedures for Addictions
- (5) Building Self Esteem
- (6) Remedial

2. Criteria for Dropping Inmates From Program -
None. Keep and work with all inmates.

D. Pre-Release

Inmates are expected to involve themselves with a community plan early in their program so that valuable resources are utilized. Prerelease groups involve systematic desensization of specific anxieties, role taking of different social situations with family, friends and employees, directed toward coping with problem areas. We use behavioral rehearsal and assertive training to combat the pull toward negative social elements and interpersonal traps; also, we use learning experiences to develop communication skills.

VI. Consultants - None

VII. Staff Training Program

- A. The Unit E (NARA) Staff meets each week for questions, problems, and policy direction.
- B. Staff training and development is emphasized by attendance at professional meetings and training institutes, unit training, institutional training, and use of consultants.

VIII. MONITORING SYSTEM

- A. Quantifying data which reflects the effect of program involvement.
- B. Testing at intervals for change using Winning-Losing Scale, Egogram, Rationality Scale, Tennessee Self Concept and Barksdale Self Esteem Rating Scale.

NARA UNIT (F)
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT

- I. AGE RANGE: 24 years of age and older
- II. STAFFING: Unit manager, services of one half-time psychologist, one casemanager, two correctional counselors, and one secretary.
- III. CAPACITY: 80
- IV. STYLE & CONCEPT OF HOUSING: The new program, the TARET Community, is a system based on a humanistic philosophy, theoretical concepts of Transactional Analysis and Rational Emotive Therapy, employing Cognitive Behavioral Procedures based on learning theory, and clinical procedures which are directed toward helping persons change their attitudes, feelings, and behaviors in ways which are consistent with self elected values and goals. The TARET Program functions as a therapeutic community, utilizing a variety of ongoing, time limited, and problem focused groups. It is an action-oriented, total system concept structured around a variety of sequential cluster activities.
- V. TREATMENT PROCESS:
 - A. Orientation Period
 1. Criteria for Admission
 - a. Provisions of Title 18 USC, Section 4252 of the Narcotic Addict Rehabilitation Act of 1966. Under this Section two main questions are asked: (1) is the offender a narcotic addict as defined by the Narcotic Addict Rehabilitation Act, and (2) is he likely to be rehabilitated through treatment. Upon completion of this study, a final sentence determination is made by the committing court.
 - b. Based on the individual needs and motivation of those who have drug related problems.
 2. Method of Selection
 - a. The U. S. District Court sentences individuals under Title 18 USC, Section 4253 of the Narcotic Addict Rehabilitation Act of 1966. Although the court has sole sentencing jurisdiction, the court is helped in the decision by the study prepared in the NARA Unit by the NARA staff. Information for the study is obtained from

the Presentence Investigation, interviews, medical examinations, psychiatric evaluations, psychological and educational tests, and feedback from members of the institutional staff.

- f. New commitments are screened by the operational lieutenant for history of drug abuse and assigned to an appropriate unit. Designated court commitments, inmate requests and transfers from other institutions or by direct referral from other unit teams.

B. Classification/Reclassification Process

- 1. Method of Differential Goal Formulation - Inmates themselves are critical factors in determining their anticipated level of functioning. With the unit team the inmate develops an individualized program plan utilizing those resources present within the unit and the institution which best serves his needs. Basic to this idea of voluntary participation is the well founded proposition that an individual must, of his own volition, be motivated to participate in a program activity if he is to gain any lasting benefit from it. Each inmate is evaluated every 90 days and reformulation for goals is made when indicated.

C. Treatment Program

- 1. Techniques and Procedures - Therapeutic groups run by psychologist and staff members utilizing a variety of ongoing, time limited, and problem focused groups.
 - a. Ongoing Groups
 - (1) Transactional Analysis & Rational Emotive Therapy
 - (2) Static
 - (3) Seminars
 - (4) Crisis - All Purpose
 - b. Time Limited Groups
 - (1) Relaxation Therapy
 - (2) Transactional Analysis
 - (3) Rational Emotive Therapy

- (4) Sensitivity - Gestalt
- (5) Personal Growth
- (6) Prerelease -- Feedback Preparation
- (7) Positive Mental Attitude
- (8) Cognitive Behavior Therapy
- (9) 4252 Study Groups

c. Problem Focused Groups

- (1) Assertive Training
- (2) Overcoming Fears
- (3) Marriage and Sexuality
- (4) Self Control Procedures for Addictions
- (5) Building Self Esteem
- (6) Remedial

2. Criteria for Dropping Inmates From Program - None.
Keep and work with all inmates.

D. Prerelease - Inmates are expected to involve themselves with a community plan early in their program so that valuable resources are utilized. Prerelease groups involve systematic desensitization of specific anxieties, role taking of different social situations with family, friends, and employees, directed toward coping with problem areas. We use behavioral rehearsal and assertive training to combat the pull toward negative social elements and interpersonal traps; also, we use learning experiences to develop communication skills.

VI. CONSULTANTS: None.

VII. TRAINING PROGRAM:

- A. The Unit F (NARA) staff meets each week for questions, problems, and policy direction.

- B. Staff training and development is emphasized by attendance at professional meetings and training institutes, unit training, institutional training, and use of consultants.

VIII. MONITORING SYSTEM:

- A. Quantifying data which reflects the effect of program involvement.
- B. Testing at intervals for change using Winning-Losing Scale, Egogram, Rationality Scale, Tennessee Self Concept, and Barksdale Self Esteem Rating Scale.

DRUG ABUSE UNIT
UNITED STATES PENITENTIARY
LEWISBURG, PENNSYLVANIA

- I. AGE RANGE/SEX: 24 years of age and older. (Males) only.
- II. STAFFING: Program Manager, caseworker, two correctional counselors, secretary.
- III. CAPACITY: 50 in unit. (We offer services to 110 others on a one two-hour session per week schedule.)

IV. TREATMENT PROCESS:

A. Criteria for Admission

Motivation primary factor. Length of sentence not a factor but priority given to those who have closer release dates. Institutional treatment team initially refers patient. Final selection made by inmates and staff.

B. Intake and Orientation Program

On a quarterly basis all prospective inmates are invited to attend orientation meetings. These meetings consist of staff and current inmates explaining the program followed by question and answer periods. This lasts from four to six weeks. After this time the prospective patients are broken into small groups moderated by inmate coordinators. At this time the prospective inmates make their decisions as to stay or leave.

C. Basic Treatment Approach

Semi-directive, goal oriented, group therapy approach, compatible with institutional, educational, and vocational programs.

D. Techniques and Procedures

Each inmate is required to write a personal resume to be presented to his group and to be revised on a continuing basis. Using the resume as an individual introduction to group work; the group member presents himself either honestly or dishonestly to his group. If he presents himself honestly with demonstrated sensitivity for the group, he is assisted then to constructively promote his individual goals by way of group reinforcement, as well as suggestions for behavior modification, and/or alternatives to his plan, as well as involvement with the resources existing both with the inmates and the staff within the unit. If, however, he presents himself dishonestly, the group pursues his dishonesty both collectively and individually, pursuing not only the obvious dishonesty in his statements, but also the rationale behind their construction. The importance of this "individual and group relationship" is common to all experiences in that the identification of both human weaknesses and strengths can ultimately become constructive in behavior modification.

The pursuit of unrealistic goals, exaggerated lifestyles, and freedom centered behavior; both by way of the resume and by way of acts of behavior in the unit, promote certain levels of antagonism with the groups. This antagonism when properly channeled into the unit, honesty exposed and directed to honest evaluation of inmates and their peers, promotes a climate in which an individual can and must change his behavior patterns to one where he can effectively deal with problems within his abilities and must abandon deceptions and ruses which center about problems that are not within his ability to control.

E. Pre-Release Programming

Pre-release programming is actually started with the presentation of the resume, in that the patient is required to set obtainable goals related to his

maintaining a productive status in the community upon his release. This is continued by way of periodic reviews to ascertain his progress and determine the possibility of his ability to complete the stated goals within a specific time frame.

By way of the reviews we are able to determine the ability of the inmate to meet the requirements of his goals and to make any necessary adjustments or changes in his goals.

As we come closer to his release date we begin to work closely with developed community resources to, if necessary, continue his educational and/or vocational training in the community. If he has completed his training we attempt to place him, again through our developed resources, in a position commensurate with his abilities.

V. CONSULTANTS:

A. Psychological (Testing)

This consultant tests inmate to enable staff to get a better perspective of the individual, the aftercare agency and U. S. Probation Officer to understand the process on the institutional level.

B. Vocational

Works directly with residents on vocational motivation.

C. Social Worker (Domestic Problems)

A recently instituted ten-week course on Resolving Domestic Problems is taught by a consultant social worker. The anticipations are that program participants after this course will be better able to preserve or salvage their respective domestic situations.

VI. STAFF TRAINING PROGRAM:

Staff training for the functional Drug Abuse Unit at Lewisburg, while to some degree formalized is really an embodiment of the constant construction of a body of knowledge about institutional programming and operation of collateral agencies; i.e., the Parole Board and courts, and understanding and application of sound strategies which promote realistic goals for individuals in the program, palatable and acceptable to the Parole Board and to society in general. Unavoidably a great deal of this training must come from a significant exposure to Federal Prisons' operations, a thorough understanding of the parole process, a more than average understanding of the court process, and a staff acceptance of the traditional work ethic in American Society.

Beyond that, specialized technique training is being acquired through Bureau of Prisons affiliated programs, Civil Service Commission programs and written material received both periodically and generally.

DRUG ABUSE PROGRAMS MANUAL

FEDERAL BUREAU OF PRISONS

NORMAN A. CARLSON
DIRECTOR

Policy Statement 8500.1
4-20-73

8510 - LEGAL AUTHORITY AND HISTORICAL BACKGROUND

8511 - Narcotic Addict Rehabilitation Act

In November, 1966, the Narcotic Addict Rehabilitation Act (NARA) was passed (P. L. 89-793). Title II authorized the Attorney General and by delegation the Bureau of Prisons to provide specialized programs and community "aftercare" for eligible narcotic-dependent offenders. In March, 1968, the first institutional drug abuse treatment unit became operational. As of July, 1971, there were five such NARA units established in various Bureau correctional facilities. Numerous contracts were established by the Bureau with various community agencies throughout the country to provide a wide range of "aftercare" services to offenders released from "incare" treatment programs to parole supervision.

The legislative restrictions of NARA, however, made it impossible to reach many offenders who were ineligible for treatment under its provisions.

8512 - "Non-NARA" Programs ("DAP's")

Beginning in July, 1971, the Bureau established "non-NARA" treatment units for a wider variety of drug-dependent offenders, including those with histories of significant abuse of non-narcotic drugs, such as amphetamines, barbiturates, and hallucinogens. By the end of FY 1973 there will be a total of fifteen drug abuse units (five "NARA" and ten "non-NARA" or "DAP's") in fourteen institutions, capable of evaluating and treating 1,050 males and 150 females. Additional programs are being developed as funds and resources permit. Since the overall objectives of the "NARA" and "non-NARA" types of programs are identical, "non-NARA" offenders may now be included in what was formerly exclusively a "NARA" program, and vice versa. Both types of programs are now referred to as "Drug Abuse Programs." For the time being, however, studies under NARA continue to be conducted at the five institutions with NARA programs.

8513 - Public Law 92-293

In May, 1972, P. L. 92-293 was passed, authorizing "aftercare" type services to a wider range of drug-dependent offenders than were covered under NARA. With this legislation all drug-dependent parolees, mandatory releasees, and probationers may be required to participate.

With the broadening of such services, the term "community care" is now more appropriate than "aftercare."

8530 - DEFINITIONS OF DRUG ADDICTION AND DRUG DEPENDENCY

An absolute definition of drug addiction universally agreed upon does not exist. However, the World Health Organization definition serves as a basic operational definition:

"Drug addiction is a state of periodic or chronic intoxication produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include:

1. An overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means;
2. A tendency to increase the dose;
3. A psychic (psychological) and, generally, a physical dependence on the effects of the drug;
4. Detrimental effect on the individual and on society."

NARA defines addiction according to the type of drug used and limits "addiction" to dependency on narcotics, as listed in Section 4731 of the Internal Revenue Code of 1954 as amended. That list does not include alcohol, marijuana, barbiturates, amphetamines, or hallucinogens.

Public Law 92-293 applies to "addicts" as defined by NARA and also to "drug-dependent persons" as defined by the Public Health Service Act [42 U.S.C. 201, Section 2(q)]:

"A person who is using a controlled substance as defined in Section 802, Title 21 and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuing basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence."

Accordingly, dependence on so called "soft drugs" such as marijuana, barbiturates, amphetamines, and hallucinogens is included. Dependence on alcohol is not.

8540 - CRITERIA FOR ELIGIBILITY

8541 - NARA

Under NARA, Section 4252, U. S. District Courts may make commitments for "examination" to determine (1) whether an eligible offender is an addict as defined by the Act, and (2) whether he is likely to be rehabilitated through treatment. While it is expected that most commitments under Section 4252 will be found suitable for commitment under the treatment provisions of the Act (Section 4253), those who fall within the following categories are not ordinarily considered "treatable";

- a. When the maximum sentence for the offense will not provide sufficient time to accomplish treatment objectives. (Generally those committed in which the maximum sentence for the offense is less than three years should be considered as ineligible. Exceptions may be made if the treatment objectives including community care can be accomplished sooner.)
- b. When there is mental illness and/or physical impairment to the extent that the offender could not participate in the programs.
- c. When treatment resources are not available to fulfill the specific needs of the offender.

Certain offenders are ineligible for NARA because of legal restrictions such as his being convicted of a "crime of violence" or importing or selling narcotics for reasons other than the support of his own addiction; his having an outstanding felony charge ("detainer"); his being under supervision of another authority unless that authority agrees to NARA commitment; his having been convicted of a felony on two or more prior occasions; his having already been committed to certain addiction treatment programs. (Reference is made to Section 4251 of the Act for a full explanation of these restrictions.) It is expected that the Court carefully screen potential candidates regarding these legal restrictions prior to commitment for "examination" under Section 4252, but occasionally it may be that the institutional staff discloses that an offender already committed is legally ineligible (Procedures for such instances are described under STUDY AND OBSERVATION ("EXAMINATION") PROCEDURES (NARA), Cover Letter, paragraph 8553).

8542 - "Non-NARA"

Eligibility for an "non-NARA" offender's being involved in a Drug Abuse Program is based on need and a history of drug dependency as defined in the Public Health Service Act (See DEFINITIONS, paragraph 8530). Ordinarily, an offender would be within eighteen months of probable release so as to sustain a high level of involvement in his incare program that may carry over to his involvement in community care. Exceptions can be made, however, when a program staff determines that there is sufficient reason.

In the Supreme Court of the United States

OCTOBER TERM, 1973

—
No. 72-5881

ROBERT EDWARD MARSHALL, PETITIONER

v.

UNITED STATES OF AMERICA

—
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

—
BRIEF FOR THE UNITED STATES

—
OPINION BELOW

The opinion of the court of appeals (A. 18-26, 28) is reported at 470 F.2d 34.

JURISDICTION

The judgment of the court of appeals (A. 27) was entered on November 15, 1972. The petition for a writ of certiorari was filed on December 13, 1972 and was granted on February 26, 1973. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether that portion of the Narcotic Addict Rehabilitation Act of 1966 that excludes narcotic

(1)

addicts with two or more prior felony convictions from eligibility for commitment for treatment of their addiction in lieu of criminal sentencing violates the Due Process Clause of the Fifth Amendment.

STATUTES INVOLVED

Title II of the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. 4251-4255, is set forth in Petitioner's Brief at pp. 2-6.

STATEMENT

On February 4, 1971, petitioner pleaded guilty to a charge of entering a bank with intent to commit larceny in violation of 18 U.S.C. 2113(a); he was sentenced to ten years' imprisonment. At sentencing, he requested that he be considered for treatment as a narcotic addict pursuant to Title II of the Narcotic Addict Rehabilitation Act of 1966 ("NARA"). The court, noting his record of prior convictions for burglary, forgery and possession of a firearm, held that the two prior felony exclusion set forth in 18 U.S.C. 4251(f) (4) precluded him from consideration for such commitment. It did, however, recommend that while incarcerated he receive treatment for his narcotic addiction.¹

¹ The rehabilitative treatment afforded addicts by the Federal Bureau of Prisons is essentially the same, whether they are committed to the Bureau's custody under NARA or under ordinary criminal sentences. However, treatment begins immediately upon commitment under NARA, and the offender is eligible for conditional release on parole after six months of treatment (18 U.S.C. 4254). Addicts not committed under NARA are not placed in the rehabilitation program until about 12 to 18 months before their anticipated release, since it is important that after-

On October 15, 1971, petitioner moved under 28 U.S.C. 2255 to vacate his sentence as illegal on the grounds that the two prior felony exclusion violates the concept of equal protection of the laws embodied in the Due Process Clause of the Fifth Amendment, and that the court's refusal on the basis of that exclusion to consider him for NARA commitment was consequently improper (A. 2-5). The district court denied the motion (A. 12-13) and the court of appeals affirmed, finding no constitutional infirmity in the legislative classifications (A. 18-26).

INTRODUCTION AND SUMMARY OF ARGUMENT

In enacting the Narcotic Addict Rehabilitation Act of 1966 (P.L. 89-793, 80 Stat. 1438), Congress initiated a program to break the narcotic addiction-criminal conduct cycle through a three-pronged experimental effort. Title I of the statute (28 U.S.C. 2901-2906) provides for rehabilitative civil commitment in lieu of trial for certain consenting narcotic addicts charged with federal offenses. Title II (18 U.S.C. 4251-4255)—involved in this case—provides for committing certain narcotic addicts who have been convicted of federal offenses for treatment in lieu of any other sentence that may be au-

care in the community follow immediately on the institutional phase of the program. Moreover, although it is estimated that approximately 5,000 federal prisoners suffer from some degree of drug dependency, the optimum capacity of the facilities operated under NARA is presently about 600. A roughly equivalent number of addicts can be treated in non-NARA facilities. Thus, although commitment under NARA assures treatment, a judicial recommendation for similar treatment at the time an ordinary criminal sentence is imposed does not.

thorized by law. Title III (42 U.S.C. 3411-3426) provides for rehabilitative civil commitment at the instance of the addict himself or a "related individual" for certain narcotic addicts who are not charged with any federal offense.

Commitment is limited to those addicts who are adjudged likely to be rehabilitated through treatment. Under Title II, if the court believes a convicted offender is an addict who is *otherwise eligible* under the Act for treatment, the court may place the offender in the custody of the Attorney General for a study to determine whether he is in fact an addict, and whether he is likely to be rehabilitated through treatment. The Attorney General reports his conclusions to the court within thirty days, or such longer period as the court permits. 18 U.S.C. 4252. If the court then determines that the offender is an addict who is likely to be rehabilitated, it commits him to the custody of the Attorney General for an indeterminate period, not to exceed either 10 years or the maximum sentence for the offense for which he was convicted, whichever is shorter. 18 U.S.C. 4253(a).²

² Under Title I, the initial judgment as to the likelihood of rehabilitation is made by the Surgeon General, after commitment for examination to the custody of either the Surgeon General or the Attorney General. 28 U.S.C. 2902(a). Under Title III, the initial judgment is made by two qualified physicians (including at least one psychiatrist) appointed by the district court. Alternatively the court in its discretion may commit the addict to the custody of the Surgeon General for the examination. 42 U.S.C. 3413. Under both of those titles, the judge makes the final decision, unless, under Title III, the addict demands a jury trial (28 U.S.C. 2902(b); 42 U.S.C. 3414(a)).

The opportunity to be considered for rehabilitative commitment is limited under all three titles. Titles I and II contain parallel definitions of eligibility (28 U.S.C. 2901(g); 18 U.S.C. 4251(f)) which exclude from consideration (1) those who are charged with (Title I) or convicted of (Title II) specifically defined crimes of violence; (2) those who are charged with (Title I) or convicted of (Title II) unlawfully selling a narcotic drug (unless, under Title II, the court determines that the primary purpose of the sale was to enable the person seeking rehabilitative commitment to obtain for his own use a narcotic drug which he required because of his addiction); (3) those against whom there are pending prior felony charges or who are under sentences which have not been fully served;³ (4) those who have been convicted of a felony on two or more prior occasions; and (5) those who have previously been committed because of narcotic addiction under any federal or state program on three or more occasions.⁴

Petitioner contends that the fourth exclusion adopted by Congress—of persons with two or more prior felony convictions—has no rational basis, and thus that its application to preclude him from consideration for rehabilitative commitment in lieu of the penal sentence which he received constituted a violation of his Fifth Amendment due process right to the

³ A person on probation, parole, or mandatory release may be committed if the authority empowered to order his return to custody consents to his commitment.

⁴ The exclusion under Title III parallels the third exclusion in Titles I and II; it bars from consideration those against whom criminal charges are pending or who are under sentence.

equal protection of the laws. Examination of the legislative history and the scheme of the legislation itself shows that the basis for the exclusion of addicts with two prior felony convictions was the desire to assure that the benefits of the limited experimental program being established would be available to those most likely to be benefited by it—those who were primarily addicts, and only secondarily criminals. At the same time, Congress did not wish the program to be used as a means for hardened criminals to escape punishment. The two prior felony exclusion was thus adopted as one of several easily applied criteria for husbanding the limited resources allocated to the program. Since the classification, which is not inherently suspect, bears a rational relation to a legitimate legislative purpose, there is no denial of equal protection. The courts of appeals which have found such a denial have incorrectly substituted their judgment concerning the wisdom of the exclusion for that of the Congress.

ARGUMENT

THE PROVISION OF 18 U.S.C. 4251(f)(4), PRECLUDING CONSIDERATION FOR REHABILITATIVE COMMITMENT OF NARCOTICS ADDICTS WHO HAVE BEEN CONVICTED OF TWO OR MORE PRIOR FELONIES, DOES NOT OFFEND THE CONCEPT OF EQUAL PROTECTION EMBODIED IN THE FIFTH AMENDMENT DUE PROCESS CLAUSE

A. CONGRESS ENACTED THE NARCOTIC ADDICT REHABILITATION ACT COMMITMENT PROGRAM AS AN EXPERIMENTAL PILOT PROJECT FOR WHICH ONLY THOSE ADDICTS DEEMED MOST CAPABLE OF BEING REHABILITATED WOULD BE ELIGIBLE

Although relatively broad in its reach, the bill which became the Narcotic Addict Rehabilitation Act was "only a pilot project," which offered a "chance

to experiment on a very limited scale, under careful court and medical supervision" (112 Cong. Rec. 11814 [Rep. Hungate].⁵ The Senate Committee noted that the bill "does not pretend to offer a final and total solution to the problem of treating narcotic addiction." S. Rep. No. 1667, 89th Cong., 2d Sess., at 14. Because of the experimental nature of the program, provisions were written to limit the class of persons eligible for consideration for rehabilitative commitment in lieu of criminal sentencing. As the Surgeon General explained while testifying in favor of the version of the legislation proposed by the administration, the limitations were "adopted in the interest of public safety, and in recognition of the still novel and somewhat uncharted nature of this kind of program." Hearings before Subcommittee No. 2 of the House Committee on the Judiciary, Civil Commitment and Treatment of Narcotic Addict, 89th Cong., 1st and 2d Sess., at 121.⁶

More specifically, the limitations on eligibility reflect three interrelated congressional aims: to maximize the chances for success of the initial program, to

⁵ During debate, the proposed legislation was described as a "first step" (112 Cong. Rec. 11817 [Rep. Multer], 11835 [Rep. Halpern]), a "good start" (112 Cong. Rec. 25433 [Sen. Ervin]), a "good beginning" (112 Cong. Rec. 25433 [Sen. Robert F. Kennedy of New York]), and a "considered step in the right direction" (112 Cong. Rec. 11813 [Rep. McCullough]). Representative Celler noted that Congress was "striking out on a new path" and was "only on the threshold of the attempt to cure drug addiction" (112 Cong. Rec. 11898), and Senator Ervin stated that "[w]e do not know enough about the problem yet to legislate with finality" (112 Cong. Rec. 25433).

⁶ Cited hereafter as "Hearings."

keep its costs within bounds, and to protect society by preventing the program from becoming a means by which hardened criminals could avoid penal sanctions.

The federal voluntary commitment program in operation at the time NARA was being debated had a relapse rate of 75%, and even in the more successful program operated by the state of California the relapse rate was 50% (Hearings, at 125). The relative success of the California program was attributed to its emphasis on after-care and close supervision. These were to be similarly emphasized in the new federal program (S. Rep. No. 1667, *supra*, at 15).⁷ Accordingly, the three titles establishing the different forms of rehabilitative commitment provide that no addict is to be committed thereunder unless adequate facilities or personnel for his treatment are available. 28 U.S.C. 2902(b); 18 U.S.C. 4253(a); 42 U.S.C. 3422.

The questions whether available resources were adequate for a successful program and, if they were not, what the potential cost of providing new facilities would be, troubled Congress throughout its consideration of the legislation. Despite the inquiries of doubting members of the House subcommittee, the Director of the Bureau of Prisons indicated that no new facilities or personnel would be required to implement the Act (Hearings, at 388, 389-391, 393). The Surgeon General testified, however, that the federal facility

⁷ A number of Congressmen pointed out during debate that an unsuccessful program operated by the State of New York owed its difficulties to its lack of sufficient facilities and trained personnel. 112 Cong. Rec. 11827 (Rep. Reid of New York), 11897 (Rep. Farbstein), 28549 (Rep. Addabbo).

then used for the voluntary commitment program was already operating at essentially full capacity (Hearings, at 119), and the Prisons Director admitted that there was no way of estimating how many addicts would be committed under NARA (Hearings, at 393).

A number of Congressmen therefore urged the necessity of expanding federal facilities and appropriating adequate funds to accomplish this expansion.⁶ This approach, however, was rejected. An amendment which would have added a fifteen million dollar appropriation to the bill for such an expansion was defeated, at least in part because of a reluctance to expend such a sum on an experimental program. See generally 112 Cong. Rec. 11896-11901.⁷

Congress therefore adopted the alternative approach: In order to limit expenditures and still provide extensive enough treatment to give the program a chance of success, it restricted the classes of persons who would be eligible to participate in the program. Instead of authorizing an attempt to treat all narcotics addicts who engage in criminal conduct, it established a "pilot project," which was intended to reach that group which was considered both most amenable

⁶ 112 Cong. Rec. 11817 (Rep. Gallagher), 11826 (Rep. Wright), 11835-11836 (Rep. Halpern), 11894 (Rep. Bingham), 11897 (Rep. Farbstein), 11898 (Rep. Tenzer), 11901 (Rep. Gilbert).

⁷ In conference, the House accepted a Senate amendment adding a fifteen million dollar appropriation for each of two fiscal years, but the purpose of the appropriation was not to provide new federal facilities, but rather to enable the Surgeon General to make grants to states, municipalities and private institutions for non-federal programs. See H. Rep. No. 2316, 80th Cong., 2d Sess., at 19-20; P.L. 89-793, Title IV, § 402, 80 Stat. 1448.

to treatment, and most deserving of the special benefits provided by the new law.¹⁰

The intended effect of the legislation was thus "to confine eligibility for the benefits of the legislation to addicts accused of nonviolent crimes who show good prospects for rehabilitation, while retaining strict criminal punishment for dangerous or hardened offenders, narcotics pushers, and persons with a history of failure to respond to treatment." S. Rep. No. 1667, *supra*, at 17, see also *id.* at 13.¹¹

The two prior felony exclusion provided an easily administered means of implementing this intent. In the first place, there had been testimony that half of those convicted of narcotic offenses had two or more prior felony convictions while the remainder had one or none (Hearings at 381). If the same statistics were generally true of addicts convicted of non-narcotic offenses, the exclusion would approximately

¹⁰ Representative McClory, a member of the subcommittee which considered the bill, explained:

"[N]arcotic addiction frequently is found among the criminal element. They are first of all criminals; secondarily, they are narcotic addicts.

"Under this legislation what we are aiming to get at is the narcotic addict who is secondarily guilty of some sort of minor or nonviolent offense. When the judge feels that such an offender can be rehabilitated and his addiction treated as a disease, he will be given the advantage of civil commitment procedure under title I and title II" (112 Cong. Rec. 11813).

¹¹ The quoted language was used to explain the eligibility limitations contained in Title I. The explanation applies equally, however, to the limitations contained in Title II, since the categories of eligibility are the same. See S. Rep. No. 1667, *supra*, at 18.

halve the number of addicts eligible for treatment, thereby effectively husbanding the limited resources available. Moreover, a focus on whether an offender has two or more prior felony convictions provides an entirely reasonable dividing line for determining when a man is primarily an addict and secondarily a criminal and when the reverse is more likely to be true. Thus the exclusion also tended to assure that the limited resources were allocated to the group Congress had determined was particularly likely to benefit from treatment, rather than to those especially deserving traditional criminal sentencing. The two prior felony exclusion, in short, was intended, like its companion exclusions, to serve the purpose of maximizing the chances for success of the experimental pilot project, while avoiding the danger that it would be used to permit hardened offenders to escape punishment.

B. THE TWO PRIOR FELONY EXCLUSION RATIONALLY SERVES THE LEGITIMATE LEGISLATIVE PURPOSE OF EFFICIENTLY ALLOCATING THE LIMITED RESOURCES WHICH CONGRESS WAS WILLING TO COMMIT TO THE NARA PROGRAM

The congressional belief that limitations on eligibility were necessary in order to apportion the limited resources available for the proposed rehabilitation program was warranted. The Bureau of Prisons presently maintains five facilities to handle addicts committed for treatment or study under Title II of the Act.¹²

¹² These facilities are located at Milan, Michigan; Danbury, Connecticut; Terminal Island, California; Alderson, West Virginia; and Fort Worth, Texas. There are also 10 similar non-NARA facilities in which about 550 addicts from the general prison system are treated.

According to the bureau, these facilities have an optimum capacity of 600,¹³ but as of April 30, 1973, the facilities were being operated at over 100% capacity.¹⁴ Any substantial relaxation in eligibility qualifications would thus overburden facilities which are already being operated above optimum capacity. The impact of relaxing eligibility requirements cannot, moreover, be minimized by arguing that such a relaxation will increase only the number of those qualifying for consideration for treatment and not necessarily those who will actually receive treatment. The same resources—in terms of space, beds and personnel—are used for those committed for study as are used for those actually being treated.¹⁵

The real question presented by this case is thus whether Congress could properly conclude that addicts, upon their third conviction for a felony, constitute such doubtful and undeserving prospects for

¹³ Optimum capacity is determined to some extent by the number of psychologists, case workers, and correction counselors available at each facility. According to the Bureau of Prisons, the goal is to have one psychologist, one case worker and two correction counselors for every fifty addicts, although in the general prison system a caseload for case workers and correction counselors of 200 is considered acceptable.

¹⁴ There were 647 addicts in the five facilities: 493 assigned for treatment and 91 for preliminary study under NARA, and 60 non-NARA addicts from the general prison system.

¹⁵ Although offenders committed for study typically stay in the facility for only a month, as opposed to the typical stay of 14 months for treatment, the overall load imposed on the facilities by commitments for study remains fairly constant. Throughout the six months from December 1972 through May 1973, there were approximately 100 offenders undergoing study at all times.

rehabilitation that it would unduly burden the limited resources of the program to allow them to be committed even for study. This Court's prior pronouncements on the subject of equal protection demonstrate clearly that Congress could properly reach that conclusion.

1. The constitutional test to be applied becomes clear when the issue in this case is kept in mind. What the Court is called upon to review is a statute that creates new mechanisms for affording an alternative to criminal sentencing for certain persons convicted of federal felonies. In determining to whom to extend these benefits, Congress has carved out from eligibility a class of convicted felons who have previously committed at least two other felonies. Thus, the restriction relates to a statutory benefit, not a fundamental constitutional right, and the classification itself is not based on race, color, religion, national origin, political belief—or any inherently “suspect” classification.

Since the statutory judgment concerns essentially a matter of social and penal policy, “the applicable standard, in measuring the propriety of Congress’ classification, is that of rational justification,” rather than that of a “compelling governmental interest.” *United States v. Kras*, 409 U.S. 434, 446. See, also, *San Antonio Independent School District v. Rodriguez*, No. 71-1332, decided March 21, 1973, slip op. at 29-30, 33-36. It is constitutionally sufficient that classifications which, like this one, are not inherently suspect “bear some rational relationship to a legitimate

state end"; they "will be set aside as violative of the equal protection clause only if based on reasons totally unrelated to the pursuit of that goal." *McDonald v. Board of Education*, 394 U.S. 802, 809; see, also, *McGowan v. Maryland*, 366 U.S. 420, 425.

These principles of judicial deference to legislative policy judgments naturally apply with equal force to review of penological determinations on how to deal with those convicted of crimes, which "require only some rational basis to sustain them." *McGinnis, Commissioner of Correction v. Royster*, No. 71-718, decided February 21, 1973, slip op. p. 7. A statutory "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489. Nothing in the Constitution requires a legislature to "choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge v. Williams*, 397 U.S. 471, 487. "Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience." *South Carolina v. Katzenbach*, 383 U.S. 301, 331. And when a legislature elects to move in an area of social policy, "[s]o long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems * * * are not subject to a constitutional strait-jacket." *Jefferson v. Hackney*, 406 U.S. 535, 546.

2. Under these settled principles, the eligibility limitation for NARA commitment challenged by petitioner measures up to the requirements of rationality

and fair legislative judgment. It is evident, as we have shown, that Congress decided to enact, as a "pilot project," a rehabilitative program of reasonable cost which would have fair prospects for success. The limitations on eligibility were adopted at least in part, in order to allocate efficiently the limited resources which Congress was at that time willing to commit to the program. Petitioner's complaint is simply that what Congress proclaimed to be its "first step" was not long enough to reach him, but that complaint makes out no denial of equal protection.

In his attempt to demonstrate that the two prior felony exclusion lacks a "basis in practical experience," petitioner relies primarily upon decisions of the First Circuit in *United States v. Bishop*, 469 F. 2d 1337, and of the District of Columbia Circuit in *Watson v. United States*, 439 F. 2d 442, *United States v. Williams*, 442 F. 2d 738, *Chicquelo v. United States*, 452 F. 2d 1310, and *United States v. Hamilton*, 462 F. 2d 1190.¹⁶ An examination of the grounds for decision in both circuits, however, discloses that there is no merit to their holdings of lack of rational connection between the exclusion and the purpose for which it was adopted.

a. Underlying the holdings in both circuits is an unwillingness to accept the fact that the two prior felony exclusion, like its companion limitations on eligibility, was adopted for the purpose of allocating limited re-

¹⁶ *Watson*, *Williams* and *Chicquelo* involved prior narcotics offenses. *Hamilton* and *Bishop* involved, as does this case, convictions for non-narcotic offenses.

sources to those deemed by Congress most likely to benefit from their use. The District of Columbia Circuit simply rejected this purpose, holding that "[s]o long as Congress has provided a procedure whereby the likelihood of rehabilitation is determined by the trial judge, who may seek the assistance of the Attorney General in that regard, there is no rational justification for a conclusive presumption that an addict with two or more prior felony convictions is not rehabilitable." *United States v. Hamilton*, *supra*, 462 F. 2d at 1192. The First Circuit found that reliance upon allocation of resources as a purpose is "vitiating" by the fact that repeat felons can receive treatment after a regular criminal sentence (*United States v. Bishop*, *supra*, 469 F. 2d at 1343, n. 11),¹⁷ and held that the exclusion "is aimed *primarily* at avoiding 'light' sentencing for or the introduction into NARA centers of dangerous criminals, not to weed out those unlikely to be rehabilitated." 469 F. 2d at 1346 (emphasis added). It also took note of the trial court's duty to determine likelihood of rehabilitation in individual cases, and assumed that it is only "judicial resources" which are conserved by the exclusion. 469 F. 2d at 1344.

The District of Columbia Circuit incorrectly characterized the exclusion as a "conclusive presumption

¹⁷ As indicated in our supplemental memorandum in this case withdrawing our opposition to the grant of certiorari, priority for treatment goes to those offenders who are committed under Title II. Non-NARA offenders can obtain treatment for their addiction only to the extent that facilities to care for them are available beyond those required for NARA commitments.

that an addict with two or more prior felony convictions is not rehabilitable." *United States v. Hamilton, supra*, 462 F. 2d at 1192. Congress did not so conclude; instead, it compared the prospects for rehabilitation of such addicts with the prospects of those with fewer than two prior convictions, and concluded that the prospects of the latter group were sufficiently better than those of the former to justify devoting the limited resources being made available to attempts to cure addicts without substantial criminal records. Nor, as the First Circuit appeared to suggest, were the resources that Congress sought to apply most productively primarily those of the judiciary. Part of the judicial process of determining likelihood of rehabilitation under Title II involves committing the convicted addict for study. But, as noted above (p. 12), resources devoted to addicts committed for study could otherwise be used by addicts committed for treatment.

The First Circuit was equally incorrect when it held that the "primary" purpose of the exclusion is punitive, rather than allocative of resources. Concededly, the limitations on eligibility were intended in part to protect society by assuring that NARA would not permit multiple offenders to escape punishment. But, as we have shown, the punitive and allocative functions were presented as two sides of the same coin—the multiple offender was thought to be both deserving of punishment and a bad prospect for rehabilitation, while the addict without a substantial record was thought to be both particularly deserving of treatment and a good prospect for rehabilitation. In any event, this Court

has recently warned against "pick[ing] and choos[ing] among legitimate legislative aims to determine which is primary and which subordinate." *McGinnis, Commissioner of Correction v. Royster, supra*, slip op. at 13. The Court there further explained (*id.* at 14):

Legislation is frequently multipurposed: the removal of even a "subordinate" purpose may shift altogether the consensus of legislative judgment supporting the statute. Permitting nullification of statutory classifications based rationally on a nonprimary legislative purpose would allow courts to peruse legislative proceedings for subtle emphases supporting subjective impressions and preferences. The Equal Protection Clause does not countenance such speculative probing into the purpose of a coordinate branch.

It is thus not appropriate, in determining whether there is a rational justification for the two prior felony exclusion, to divorce that exclusion from the allocative function which Congress intended for it.

b. Having improperly dismissed the exclusion's allocative function, the courts in *Bishop*, *Watson*, and *Hamilton*, found "anomalies, in the root sense of inequalities" (*United States v. Bishop, supra*, 469 F. 2d at 1343) in the exclusion.

The "anomalies" identified reflect, in large part, simply the courts' disagreement with the legislature's judgment. In *Bishop*, the disagreement related to the relative weight to be given to past convictions in comparison to current ones, or to be given to a number of

convictions as indicating an established pattern of behavior. In *Hamilton*, it related to the possible deterrent effect of the exclusion: "it may be irrational to assume that an addict's sensitivity to deterrent influences can be measured by anything other than the strength of his addiction." *United States v. Hamilton*, *supra*, 462 F. 2d at 1194, n. 7.

To the extent that the court in *Bishop* found an inconsistency between Title III and the other two titles, it overlooked the differences between that title and the rest of the Act. Although it is true that addicts with more than two offenses may be considered for civil commitment under Title III but not under Titles I and II, the provisions of Title III are not applicable to those charged with current offenses, and thus there is no danger that civil commitment is being misused to evade possibly appropriate penal sanctions. Moreover, since the study preceding commitment under Title III is ordinarily made by court-appointed private physicians, the pre-commitment burden on the resources of the government's rehabilitation program is avoided. For these reasons, Congress could rationally conclude that it was not necessary to limit those eligible for Title III commitment as stringently as was appropriate under Titles I and II.

In any event, the two prior felony exclusion and its companion limitations on eligibility bear a rational relationship to the legitimate aim of allocating the limited resources which Congress was willing to commit to the new and experimental social welfare pro-

gram that it was instituting. It is not fatal that some addicts with more than two felony convictions might be more "deserving" of a non-criminal sentence than some addicts who are eligible for such commitment as the Act was drawn, or that some people in the former class might actually be better prospects for rehabilitation than some individuals in the latter class. The essence of the legislative function is the exercise of a policy judgment about general categories. Minor inconsistencies in the eligibility limitations are therefore immaterial. A "law need not be in every respect logically consistent with its aims to be constitutional." *Williamson v. Lee Optical Co.*, *supra*, 348 U.S. at 487-488. "In the area of * * * social welfare, a [legislature] does not violate the equal protection clause merely because the classifications made by its laws are imperfect." *Dandridge v. Williams*, *supra*, 397 U.S. at 485.

Congress had to draw the line somewhere to keep its pilot project within manageable bounds, and Congress could rationally determine that in general the rehabilitation prospects are *likely* to be better for those whose prior criminal conduct has been minimal, and that a person with a shorter criminal record is probably more deserving of non-penal treatment than a habitual offender. The standard to be applied in judging the validity of the classification system that Congress chose is therefore the one enunciated this Term in *McGinnis, Commissioner of Correction v. Roy-*

ster, supra, slip op. at 7—a case that also involved classifications for purposes of post-conviction rehabilitation:

[T]his Court has observed that “the problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.” *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69–70 (1913). We do not wish to inhibit [legislative] experimental classifications in a practical and troublesome area, but inquire only whether the challenged distinction rationally furthers some legitimate, articulated [legislative] purpose.

The classification here adopted by Congress meets this standard.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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JUNE 1973.

GRAND TOTAL FOR ALL INSTITUTIONS

(EXCLUDING DETENTIONERS)

POPULATION BY SENTENCE PROCEDURE AND LENGTH OF SENTENCE

DATA DATE AS OF DEC 31, 1976

SENTENCE PROCEDURE	TOTAL	PER- 6 MOS CENT & J. D	OVR 6 MO TO 1YR	OVR 1YR TO 2.5YR	OVR 2.5 TO 5YR	5YR TO 10YR	10YR & OVER
GRAND TOTAL	24,651	100.0	553	923	2,344	3,730	6,633
NOT REPORTED	4,248	17.1	1	20	2	4	5
REPORTED TOTAL	20,633	100.0	552	903	2,342	3,726	6,628
REGULAR ADULT	11,610	56.4	497	710	1,843	2,481	2,671
4208 (B)	77	0.4					
4208 (A1)	356	1.7			9	67	106
4208 (A2)	5,034	24.4	5	51	429	1,013	1,402
YCA STUDY	36	0.2					
YCA (B)	2,159	10.5		9	1	5	2,129
YCA (C)	413	2.0			1	1	131
FJDA MINORITY	136	0.7			15	111	8
FJDA OTHER	60	0.3	4	10	28	15	3
JUVENILE	4	0.0		1			1
SPLIT (741)	191	0.9	43	119	8	5	8
4244 SENT	4	0.0					
4244 NOT SENT	23	0.1					
4246	17	0.1					
NAPA STUDY	30	0.1					
NAPA SENTENCED	315	1.5		3	1	23	75
SENT WKENDS	5	0.0	2		1	1	1
STATE	126	0.6	1		5	4	13
OTHER	5	0.0			1		4

CERTIFICATE OF SERVICE

March 11 , 19 77

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
District of Connecticut.

David P. Gollid